Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Ninth Legislature

In Regular

Session

Held at Helena, the Seat of Government

January 7, 1985 to April 25, 1985

Montana Legislative Council

Room 138
State Capitol
Helena, Montana 59620

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OFFICERS AND MEMBERS
MONTANA
FORTY-NINTH
LEGISLATURE 1985
SENATE

Bill Norman, President of the Senate
Chet Blaylock, President Pro Tempore

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY RESIDENCE	POLITICS
*Aklestad, Gary C.	Box 32, Galata 59444	6	Toole	Republican
Anderson, John H., Jr.	Box 101, Alder 59710	37	Madison	Republican
Bengtson, Esther G.	Shepherd 59079	49	Yellowstone	Democrat
*Blaylock, Chet	502 3rd Ave., Laurel 59044	43	Yellowstone	Democrat
*Boylan, Paul	3747 So. 19th Rd., Bozeman 59715	39	Gallatin	Democrat
Brown, Bob	333 Cougar Trail, Whitefish 59937	2	Flathead	Republican
*Christiaens, B. F. Chris	210 36th St. No., Great Falls 59401	17	Cascade	Democrat
*Conover, Max	Box 46, Broadview 59015	42	Yellowstone	Democrat
Crippen, Bruce D.	2110 Overland Ave. #106, Billings 59102	45	Yellowstone	Republican
*Daniels, M. K.	Box 670, Deer Lodge 59722	24	Powell	Democrat
Eck, Dorothy	10 W. Garfield, Bozeman 59715	40	Gallatin	Democrat
Farrell, William E.	12255 Flora Dr., Missoula 59801	31	Missoula	Republican
*Fuller, David	1030 Sierra Rd. W., Helena 59601	22	Lewis & Clark	Democrat
*Gage, Delwyn	Box 1027, Cut Bank 59427	5	Glacier	Republican
*Galt, Jack	Martinsdale 59053	16	Meagher	Republican
*Goodover, Pat M.	803 Forest Ave., Great Falls 59404	20	Cascade	Republican
Haffey, Jack	709 W. 4th St., Anaconda 59711	33	Deer Lodge	Democrat
Hager, Tom	150 Norris Court, Billings 59105	48	Yellowstone	Republican
*Halligan, Mike	Box 9121, Missoula 59807	29	Missoula	Democrat
Hammond, H.W. "Swede"	Box 1366, Malta 59538	9	Phillips	Republican
Harding, Ethel M.	Box 25, Polson 59860	25	Lake	Republican
*Himsl, Matt	305 4th Ave. E. Kalispell 59901	3	Flathead	Republican
Hirsch, Les J.	Broadus Stage, Miles City 59301	13	Custer	Democrat
Jacobson, Judy H.	1440 W. Gold St., Butte 59701	36	Silver Bow	Democrat
Keating, Thomas F.	Box 20522, Billings 59104	44	Yellowstone	Republican
*Kolstad, Allen C.	Box 648, Chester 59522	7	Liberty	Republican
*Lane, Leo	Box 562, Three Forks 59752	38	Gallatin	Democrat
Lybeck, Ray	500 E. Reserve Dr., Kalispell 59901	4	Flathead	Democrat
*Lynch, J. D.	532 W. Mercury, Butte 59701	34	Silver Bow	Democrat
McCallum, George	Box 262, Plains 59859	26	Sanders	Republican
*Manning, Richard	810 7th Ave. No., Great Falls 59401	18	Cascade	Democrat
Mazurek, Joseph P.	516 Hayes, Helena 59601	23	Lewis & Clark	Democrat
*Mohar, John	Star Route 1, Troy 59935	1	Lincoln	Democrat
Neuman, Ted	Box 87, Vaughn 59487	21	Cascade	Democrat
*Norman, Bill	440 Connell, Missoula 59801	28	Missoula	Democrat
Pinsoneault, R. J. "Dick"	Box 250, St. Ignatius 59865	27	Lake	Democrat
*Regan, Pat	204 Mountain View, Billings 59101	47	Yellowstone	Democrat
*Severson, Elmer	Box 480, Middle Burnt Fork Rd., Stevensville 59870	32	Ravalli	Republican
*Shaw, James	Hodges Rt., Wibaux 59353	12	Wibaux	Republican
Smith, Ed B.	Box 11, Dagmar 59219	10	Sheridan	Republican
*Stephens, Stan	1645 Northern Heights, Havre 59501	8	Hill	Republican
*Stimatz, Lawrence G. (Larry)	1615 C Street, Butte 59701	35	Silver Bow	Democrat
*Story, Pete	Box 355, Emigrant 59027	41	Park	Republican
Thayer, Gene	2612 4th Ave. So., Great Falls 59405	19	Cascade	Republican
*Towe, Thomas E.	2739 Gregory Drive So., Billings 59102	46	Yellowstone	Democrat
Tveit, Larry J.	Rt. 1, Box 117, Fairview 59221	11	Richland	Republican
Van Valkenburg, Fred	219 University, Missoula 59801	30	Missoula	Democrat
*Weeding, Cecil	P.O. Box 78, Jordan 59337	14	Garfield	Democrat
Williams, Bob	Box 338, Hobson 59452	15	Judith Basin	Democrat
Yellowtail, William P., Jr.	Box 308, Wyola 59089	50	Big Horn	Democrat

*Term Expires Jan., 1987
All Other Terms Expire Jan., 1989

28 Democrats
22 Republicans
50 Senators

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HOUSE OF REPRESENTATIVES

John Vincent, Speaker of the House
Robert L. Marks, Republican Leader

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY RESIDENCE	POLITICS
Abrams, Hubert J.	Wibaux 59353	24	Wibaux	Democrat
Addy, Kelly	237 Ave. C, Billings 59101	94	Yellowstone	Democrat
Asay, Tom	RR 2, Box 3062, Forsyth 59327	27	Rosebud	Republican
Bachini, Bob	409 19th St., Havre 59501	14	Hill	Democrat
Bardanouve, Francis	Box 367, Harlem 59526	16	Blaine	Democrat
Bergene, Toni R.	511 29th Ave. NE, Great Falls 59404	41	Cascade	Republican
Bradley, Dorothy	919 W. Lamme, Bozeman 59715	79	Gallatin	Democrat
Brandewie, Ray	East Lake Shore, Bigfork 59911	49	Flathead	Republican
Brown, Dave	3040 Ottawa, Butte 59701	72	Silver Bow	Democrat
Brown, Jan	906 Madison, Helena 59601	46	Lewis & Clark	Democrat
Campbell, Bud	471 Lake Hill Rd., Deer Lodge 59722	48	Powell	Republican
Cobb, John	Box 348, Augusta 59410	42	Lewis & Clark	Republican
Cody, Dorothy A.	Box 973, Wolf Point 59201	20	Roosevelt	Democrat
Cohen, Benjamin R. "Ben"	Box 1657, Whitefish 59937	3	Flathead	Democrat
Compton, Duane W.	134 So. 8th E., Malta 59538	17	Phillips	Republican
Connelly, Mary Ellen	3315 Whitefish Stage, Kalispell 59901	8	Flathead	Democrat
Darko, Paula	Box 490, Libby 59923	2	Lincoln	Democrat
Devlin, Gerry	Box 186, Terry 59349	25	Prairie	Republican
Donaldson, Gene	3890 Helberg Dr., Helena 59601	43	Lewis & Clark	Republican
Driscoll, Jerry P.	4344 Stone St., Billings 59101	92	Yellowstone	Democrat
Ellerd, Robert A.	2206 Bridger Dr., Bozeman 59715	77	Gallatin	Republican
Ellison, Orval S.	W. Boulder Rt., McLeod 59052	81	Park	Republican
Ernst, Gene N.	Box 39, Stanford 59479	29	Judith Basin	Republican
Eudaily, Ralph S.	234 Kensington Ave., Missoula 59801	60	Missoula	Republican
Fritz, Harry	675 E. Central Ave., Missoula 59801	56	Missoula	Democrat
Gracia, Rodney L.	214 So., 38th St., Billings 59101	93	Yellowstone	Democrat
Gilbert, Bob	Drawer 2117, Sidney 59270	22	Richland	Republican
Glaser, William	Box 1801, Billings 59103	98	Yellowstone	Republican
Gould, R. Budd	2205 So., 5th St. W., Missoula 59801	61	Missoula	Republican
Grady, Edward J.	Canyon Creek 59633	47	Lewis & Clark	Republican
Hammond, Joe	Box 12, Alberton 59820	52	Mineral	Democrat
Hand, Bill	30 So. Arizona, Dillon 59725	73	Beaverhead	Democrat
Hannah, Tom	2228 Beloit, Billings 59102	86	Yellowstone	Republican
Hansen, Stella Jean	841 Woodford, Missoula 59801	57	Missoula	Democrat
Hanson, Marian W.	Box 237, Ashland 59003	100	Powder River	Republican
Harbin, Raymond K.	Rt. 1, Box 115, St. Ignatius 59865	53	Lake	Democrat
Harp, John G.	134 Park Ave., Kalispell 59901	7	Flathead	Republican
Harper, Hal	9 Comstock Rd., Helena 59601	44	Lewis & Clark	Democrat
Harrington, Dan W.	1201 N. Excelsior, Butte 59701	68	Silver Bow	Democrat
Hart, Marjorie	Box 25, Glendive 59330	23	Dawson	Democrat
Hayne, Harriet	Box 285, Dupuyer 59432	10	Pondera	Republican
Holliday, Gay	Box 316, Roundup 59072	31	Musselshell	Democrat
Howe, Ramona	Box 352, Lodge Grass 59050	99	Big Horn	Democrat
Iverson, Dennis	Whitlash 59545	12	Liberty	Republican
Jenkins, Loren	RR 1, Box 689, Big Sandy 59520	13	Chouteau	Republican
Jones, Tom L.	171 3 Mile Dr., Kalispell 59901	4	Flathead	Republican
Kadas, Mike	825 Cooley, Missoula 59802	55	Missoula	Democrat
Keenan, Nancy A.	1421 W. 3rd St., Anaconda 59711	66	Deer Lodge	Democrat
Keller, Vernon V.	Box 134, Fishtail 59028	83	Stillwater	Republican
Kennerly, Roland F.	Box 437, Babb 59411	9	Glacier	Democrat
Keyser, Kerry R.	Box 126, Ennis 59729	74	Madison	Republican
Kitselman, Les	1148 Patriot St., Billings 59105	95	Yellowstone	Republican
Kochnke, Francis	Box 692, Townsend 59644	32	Broadwater	Democrat
Krueger, Kurt	Box 485, Butte 59703	69	Silver Bow	Democrat
Lory, Earl C.	4795 Miller Creek Rd., Missoula 59803	59	Missoula	Republican
McCormick, Lloyd J. "Mac"	326 14th Ave. S. #2, Great Falls 59405	38	Cascade	Democrat
Manuel, Rex	RR 1, Box 42, Fairfield 59436	11	Teton	Democrat
Marks, Robert L. (Bob)	302 Lump Gulch, Clancy 59634	75	Jefferson	Republican
Menahan, William (Red)	1304 W. 5th St., Anaconda 59711	67	Deer Lodge	Democrat
Mercer, John A.	312 1st St. E., Polson 59860	50	Lake	Republican
Miles, Joan	Box 105, Helena 59624	45	Lewis & Clark	Democrat
Miller, Ron	513 52nd St. S., Great Falls 59405	34	Cascade	Republican
Montayne, John D.	1303 Galway Drive, Billings 59105	96	Yellowstone	Democrat
Moore, Jack K.	1200 32nd St. So. #85, Great Falls 59405	37	Cascade	Republican
Moore, Janet	Box 1017, Condon 59826	65	Missoula	Democrat
Nathe, Dennis G.	Box 4, Redstone 59257	19	Sheridan	Republican
Nelson, Richard M.	94 Northern Lights Blvd., Kalispell 59901	6	Flathead	Republican
Nisbet, Gerald D. (Jerry)	420 25th Ave. NE, Great Falls 59404	35	Cascade	Democrat
O'Connell, Helen G.	703 4th Ave. SW, Great Falls 59404	40	Cascade	Democrat
O'Hara, Jesse A.	1712 10th St. SW #9, Great Falls 59404	39	Cascade	Republican
Patterson, John W.	Box 150, Custer 59024	97	Yellowstone	Republican
Pavlovich, Robert J. "Bob"	1375 Harrison Ave., Butte 59701	70	Silver Bow	Democrat
Peck, Ray	620 4th Ave., Havre 59501	15	Hill	Democrat
Peterson, Mary Lou	Rt. 1, Box 117, Eureka 59917	1	Lincoln	Republican
Phillips, John E.	1200 32nd St. S., #61, Great Falls 59405	33	Cascade	Republican
Pistoria, Paul G.	2421 Central Ave., Great Falls 59401	36	Cascade	Democrat
Pott, Bing C.	Rt. 2, Box 54, Culbertson 59218	21	Richland	Democrat
Quilici, Joe	3040 Kossuth, Butte 59701	71	Silver Bow	Democrat
Ramirez, Jack	4042 Pine Cove Rd., Billings 59106	87	Yellowstone	Republican

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NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY RESIDENCE	POLITICS
Raney, Bob	212 S. 6th St., Livingston 59047	82	Park	Democrat
Rapp-Svrcek, Paul S.	Box 1392, Thompson Falls 59873	51	Sanders	Democrat
Ream, Bob	Box 7141, Missoula 59807	54	Missoula	Democrat
Rehberg, Dennis R.	Box 22232, Billings 59104	88	Yellowstone	Republican
Sales, Walter R.	3900 Stagecoach Tr., Manhattan 59741	76	Gallatin	Republican
Sands, Jack	3115 Poly Dr., Billings 59102	90	Yellowstone	Republican
Schultz, James M.	1210 7th Ave. N., Lewistown 59457	30	Fergus	Republican
Schye, Ted	North Star Rt., Glasgow 59230	18	Valley	Democrat
Simon, Bruce T.	217 Clark Ave., Billings 59101	91	Yellowstone	Republican
Smith, Clyde	148 Three Mile Dr., Kalispell 59901	5	Flathead	Republican
Spaeth, Gary	Silesia 59080	84	Carbon	Democrat
Swift, Bernie	SE 206 Rose Lane, Hamilton 59840	64	Ravalli	Republican
Switzer, L. Dean	Star Route 2, Richey 59259	28	Dawson	Republican
Thoft, Bob	1520 S. Burnt Fork Rd., Stevensville 59870	63	Ravalli	Republican
Thomas, Fred	146 Brook Lane, Stevensville 59870	62	Ravalli	Republican
Vincent, John	1020 S. 3rd, Bozeman 59715	80	Gallatin	Democrat
Waldron, Steve	Box 5233, Missoula 59806	58	Missoula	Democrat
Wallin, Norm	2422 Springcreek Dr., Bozeman 59715	78	Gallatin	Republican
Williams, J. Melvin (Mel)	511 8th Ave., Box 245, Laurel 59044	85	Yellowstone	Democrat
Winslow, Cal	1240 Crawford Dr., Billings 59102	89	Yellowstone	Republican
Zabrocki, Carl	Rt. 2, Box 3166, Miles City 59301	26	Custer	Democrat

50 Democrats
50 Republicans
100 Representative

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HOUSE AND SENATE BILLS

Chap. Num.	Senate Bill	House Bill	Sponsor	Title
1		15	M. Williams	An act to deny unemployment insurance benefits to nonprofessional school employees between academic terms and to all school employees during vacations and holidays; to provide retroactive payment of certain benefits; and to bring the Montana unemployment insurance law into conformity with federal law; amending section 39-51-2108, MCA; and providing an immediate effective date and a retroactive applicability date. ....Page 1
2		29	M. Williams	An act moving contractor residency determination responsibility from the Department of Revenue to the Department of Commerce; amending section 18-1-106, MCA; and providing an immediate effective date. ....Page 2
3		4	Manuel	An act to generally revise and clarify laws relating to government, courts, elections, and crimes; amending sections 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-101 through 45-9-103, 45-9-111, and 45-9-116, MCA; and repealing sections 2-7-101 and 3-5-212, MCA....Page 3
4		7	Marks	An act giving the Legislative Council the authority to determine disposition and distribution methods and set the sale price or prices for the proceedings of the 1972 Constitutional Convention; repealing section 4, Chapter 373, Laws of 1977, and section 2 of House Bill 897, Laws of 1979; and providing an immediate effective date.....Page 20
5		20	Quilici	An act to eliminate the requirement that delivery zone permits be obtained; amending section 61-10-203, MCA....Page 20
6		78	M. Williams	An act authorizing use of a stamp as an official seal; amending section 1-4-202, MCA....Page 21
7		87	Quilici	An act to allow the Department of Military Affairs to authorize the construction of federal facilities to be used by the state; to allow the Department of Military Affairs or the Department of Administration to act as contracting agency for the construction of such facilities; amending sections 18-2-101 through 18-2-103, MCA; and providing an immediate effective date. ....Page 22
8		5	Manuel	An act to clarify when legislative members are entitled to compensation and expenses; amending sections 5-2-301, 5-2-302, and 5-11-301, MCA; and providing an immediate effective date....Page 24
9		60	Hanson	An act to include gross vehicle weight enforcement officers in the list of officers authorized to demand that a person exhibit a livestock certificate or permit; amending section 81-3-231, MCA; and providing an immediate effective date. ....Page 26
10		61	Hanson	An act providing a penalty for violation of the brucellosis vaccination requirements; and providing an immediate effective date .....Page 27
11		110	Schye	An act repealing the provision that agricultural leases whose duration exceeds 10 years are void; repealing section 70-26-207, MCA....Page 28
12		113	Miles	An act to require all laboratories to report cancer data to the Department of Health and Environmental Sciences; amending section 50-15-703, MCA; and providing an immediate rulemaking effective date....Page 28

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
13		123	Thoft	An act to require that grant proposals for cultural and aesthetic projects be heard by a legislative appropriations subcommittee; amending section 22-2-304, MCA; and providing an immediate effective date. ....Page 29
14		76	M. Williams	An act to increase the fees charged by the county clerk for filing notarial commissions and issuing certificates of official character to conform with the fee charged by the Secretary of State; amending sections 1-5-408 and 7-4-2631, MCA; and providing an effective date. ....Page 29
15		10	Eudaily	An act to generally revise and clarify the laws relating to education and minors; amending sections 20-3-331, 20-6-321, 20-9-351, 20-9-352, 20-9-407, 20-15-403, 41-3-609, 41-3-1103, 41-3-1121, and 41-5-601, MCA....Page 31
16		28	M. Williams	An act revising the definition of wine and table wine; amending section 16-1-106, MCA; and providing an immediate effective date. ....Page 37
17		31	M. Williams	An act eliminating the provisions for keeping a duplicate assessment book; repealing section 15-8-703, MCA; and amending sections 15-8-707, 15-8-710, 15-17-113, and 15-17-207, MCA. ....Page 39
18		124	Addy	An act requiring a labor or employee organization to guarantee certain rights and safeguards to public employees in order to be recognized as the exclusive representative for collective bargaining purposes; giving the Board of Personnel Appeals jurisdiction to hear and decide disputes involving these rights and safeguards; amending section 39-31-206, MCA; and providing an immediate effective date. ...Page 40
19		32	Keenan	An act establishing a beer importer license, licensing criteria, and procedures for importing beer into Montana; defining "import"; establishing a license fee; amending sections 16-1-106, 16-3-101, 16-3-104, 16-3-201, 16-3-211 through 16-3-213, 16-3-221 through 16-3-226, 16-3-230, 16-3-241 through 16-3-244, 16-4-101, 16-4-401, 16-4-407, and 16-4-501, MCA; and providing effective dates....Page 41
20		42	Manuel	An act to generally revise the laws relating to taxation and alcohol; amending sections 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, and 16-6-106, MCA....Page 53
21		80	Waldron	An act to generally clarify certain laws relating to higher education and the Board of Public Education by making the existence of the commission on federal higher education programs discretionary, by eliminating the Resident Student Financial Assistance Program Advisory Council, by clarifying the meeting requirements for the Board of Public Education and the Board of Regents, by changing a reference to professional assistant to executive secretary, by clarifying powers of the Board of Regents, by changing the reporting date for certain reports relating to federal funds, and by repealing a law relating to endowed chairs at state institutions; amending sections 2-15-1515, 20-2-101, 20-2-111, 20-2-112, 20-25-301, 20-25-424, and 20-26-103, MCA; repealing sections 2-15-1517 and 20-25-105, MCA; and providing an immediate effective date. ....Page 61
22		88	Keyser	An act providing that while a peace officer is in another jurisdiction which has requested his assistance he is under the authority of the entity requesting his assistance; amending section 44-11-101, MCA. ....Page 65
23		137	Driscoll	An act allowing a person who is temporarily totally disabled under the workers' compensation law to use wage credits from employment prior to the disability for purposes of unemployment insurance; amending section 39-51-201, MCA; and providing an effective date. ....Page 66
24		6	Marks	An act to generally revise and clarify laws relating to mining and to water rights and use; amending sections 82-4-254, 85-2-123, 85-8-624, and 90-6-307, MCA....Page 69
25		142	Manuel	An act to conform the time limit within which a premarital serological test performed outside of Montana must be performed to that required for such tests performed within Montana; amending section 40-1-205, MCA; and providing an immediate effective date. .....Page 74

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
26	71		Hager	An act to generally revise the procedure for reviewing certificate of need applications for health care facilities; eliminating appeals to the Board of Health and Environmental Sciences; amending sections 50-5-302 and 50-5-306, MCA; and providing an immediate effective date.....Page 75
27		77	M. Williams	An act to generally revise recording fees charged by the county clerk; amending sections 7-4-2631 and 7-4-2632, MCA; and providing an effective date.....Page 77
28		148	Manuel	An act to revise the requalification training requirements for farm applicators under the Montana Pesticides Act; amending section 80-8-209, MCA.....Page 79
29		9	Eudaily	An act providing that statements of intent need not accompany delegations of authority extending previously enacted rulemaking authority to newly enacted or amended agency duties; amending sections 5-4-402 and 5-4-404, MCA; and providing an immediate effective date and an applicability date.....Page 80
30		34	Keenan	An act setting the standard income tax deduction for joint returns and head of household returns at twice the amount for single returns; amending section 15-30-122, MCA; and providing an applicability date.....Page 81
31		116	Miles	An act to delete the requirement that a privately owned public swimming pool have a lifeguard unless a person certified as trained in basic water safety measures is accessible to the pool; amending section 50-53-107, MCA; and providing an immediate effective date. ...Page 82
32		94	Ernst	An act reassigning implementation of the light vehicle reregistration by mail law to the Division of Motor Vehicles; amending section 61-3-535, MCA; and providing an immediate effective date. .....Page 83
33		195	Garcia	An act replacing references to "mobile homes" in Title 50, chapter 60, MCA, with "factory-built buildings"; defining "factory-built building"; and amending sections 50-60-101, 50-60-401, and 50-60-402, MCA. .....Page 83
34		27	M. Williams	An act to define and establish lien priority of withholding taxes; amending section 15-30-208, MCA; and providing an immediate effective date and an applicability date.....Page 86
35		30	M. Williams	An act empowering the Department of Revenue to compel uncooperative individuals to file correct state tax returns and reports through the filing of a petition for an order to show cause; and providing an immediate effective date.....Page 86
36		350	Schultz	An act to provide that the fees for commercial feed registration and distribution permits are nonrefundable; to require applicants for registration of commercial feeds to submit certain information to the Department of Agriculture; and amending section 80-9-201, MCA. .....Page 88
37		81	Ellison	An act designating the duck-billed dinosaur Maiasaura peeblesorum as the official state fossil.....Page 89
38		13	Kennerly	An act revising the requirements concerning filing of a state-tribal cooperative agreement; removing the requirement for gubernatorial approval of an agreement involving a state agency; amending section 18-11-107, MCA; and repealing section 18-11-106, MCA. .....Page 90
39		22	Harp	An act to permit the expenditure of funds from the highway reconstruction trust account on all highways maintained by the Department of Highways; amending sections 60-3-217 and 60-3-218, MCA. .....Page 90
40		107	Miller	An act revising the laws governing the practice of electrology; requiring electrology schools and teachers to be licensed; granting the Board of Cosmetologists authority to adopt rules regulating schools and licensees and to adopt sanitary standards; amending sections 37-32-201, 37-32-301, and 37-32-304, MCA; and providing effective dates.....Page 91
41		141	Manuel	An act to delete the requirement that the Department of Health and Environmental Sciences perform syphilis tests without charge; amending section 50-18-104, MCA; and providing an immediate effective date.....Page 93

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43		233	Grady	An act changing the name of the Board of Veterinarians to the Board of Veterinary Medicine; including dentistry in the definition of veterinary medicine; changing provisions relating to employment of students as veterinarians' assistants; changing the deadline for payment of the fee for renewal of a veterinarian's license; amending sections 2-15-1852, 37-18-101, 37-18-102, 37-18-104, and 37-18-307, MCA; and providing an immediate effective date.....Page 95
44		316	Krueger	An act to restructure the membership of the Rangeland Resources Committee and to provide that the committee may consult with other agencies; amending sections 2-15-3305 and 76-14-106, MCA; and providing an immediate effective date.....Page 99
45	407		B. Williams	An act providing that termination, cancellation, nonrenewal, or substantial alteration of a farm implements dealership agreement by the grantor must be for good cause and upon adequate notice; defining "good cause"; and providing an immediate effective date.....Page 100
46		23	Abrams	An act to repeal the statutes authorizing the allocation of funds to the federal-aid priority primary highway program, the federal-aid economic growth center highway program, and the federal-aid safer off-system roads program; repealing sections 60-3-208, 60-3-221 through 60-3-225, and 60-3-231 through 60-3-234, MCA.....Page 101
47		140	Asay	An act to provide for the proration and collection of taxes assessed on a mobile home or housetrailer after the second payment date for such taxes; amending section 15-24-202, MCA; and providing an applicability date.....Page 102
48		154	Pistoria	An act to repeal the Montana Economic Land Development Act; repealing sections 15-24-1301 through 15-24-1318, MCA.....Page 103
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183	164		Neuman	An act to generally revise the laws prescribing the respective powers and duties of the Department of Administration, State Treasurer, and the Board of Investments; allowing the board to hire its own personnel; requiring the board to keep certain records; amending sections 2-15-1005 and 17-6-201, MCA; and providing an effective date. ..... Page 330
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194		790	Ramirez	An act to clarify when a loan guaranty is an unconditional contract for the direct payment of money upon which a writ of attachment may be issued; amending section 27-18-101, MCA. ..... Page 345
195		852	Harp	An act to provide an exemption for certain persons from regulation as public utilities; to exclude such persons from the definition of "public utility"; amending section 69-3-101, MCA; and providing an immediate effective date. ..... Page 345
196	169		Harding	An act to allow election administrators the option of conducting certain specific elections by mail ballot; amending sections 7-13-2236 and 13-1-401, MCA; and providing an effective date. ..... Page 347
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201	50		B. Brown	An act eliminating the requirements for a county clerk and recorder to submit a delinquent taxpayer report and a copy of the county budget to the Department of Revenue; amending section 7-6-2315, MCA; and repealing section 15-16-304, MCA. ..... Page 366
202	90		Mazurek	An act to expand discovery in criminal cases; providing for mutual and reciprocal discovery in criminal cases; and repealing sections 46-15-301 through 46-15-303, MCA. ..... Page 367
203	92		Christiaens	An act extending handicapped persons' parking privileges to persons who are entitled to such privileges in another state; amending section 49-4-302, MCA ..... Page 372
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206	180		Van Valkenburg	An act changing the name of the county preliminary budget to the county proposed budget; changing the dates for preparation of a county proposed budget; increasing the number of times it must be published; deleting the requirement that it must be transmitted to the Departments of Commerce and Revenue; amending sections 7-6-2315, 7-6-2316, 7-6-2351, and 53-2-322, MCA; and providing an immediate effective date..... Page 375
207	225		Jacobson	An act to exempt the Montana university system from certain requirements relating to data processing unless the university system's proposed data processing activity impacts the state central computer and data processing equipment pool; amending section 2-17-501, MCA; and providing an effective date. ..... Page 377
208	235		Mazurek	An act permitting a District Court, upon receipt of a petition for appointment of a conservator or other protective order, to direct that the person alleged to be mentally ill or having a mental deficiency be examined by either a professional person other than a physician or by a physician; amending section 72-5-408, MCA..... Page 378
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212	292		Neuman	An act revising and clarifying the mandatory liability protection law; amending sections 61-6-102, 61-6-303, and 61-6-304, MCA; and providing an immediate effective date..... Page 384
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220		8	Marks	An act to generally revise and clarify laws relating to local government; amending sections 7-2-2209, 7-3-1216, 7-3-1219, 7-4-2105, 7-4-2619, 7-4-2631, 7-5-4208, 7-5-4304, 7-6-2211, 7-13-2225, 7-13-2236, 7-14-2531, 7-14-2823, 7-21-2306, 7-21-2407, and 7-32-2102, MCA. ....Page 395
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222		89	Gilbert	An act to modify the requirement of displaying a special fuel user's permit for Montana-based proportionally registered motor carriers; amending sections 15-70-302 and 15-70-311, MCA. ....Page 406
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224		256	Eudaily	An act defining eligibility to use a yearly amount of termination pay in the calculation of average final compensation under the Teachers' Retirement System; clarifying the rate of contribution on this amount; amending section 19-4-101, MCA; and providing an effective date. ....Page 408
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286		702	Harbin	An act transferring various forestry functions from the Department and Board of Natural Resources and Conservation to the Department of State Lands; amending sections 77-1-304, 77-2-213, 77-2-214, and 77-5-104, MCA.....Page 515
287		705	Rehberg	An act directing the Board of Land Commissioners to hold a public hearing on any exchange of state trust lands; providing for notice of a proposed exchange to the leaseholders; providing for approval of an exchange; providing for settlement for improvements; providing that, in an exchange involving private land, the property appraisal be made available to the public; amending sections 77-2-203 and 77-2-204, MCA.....Page 517
288		769	Holliday	An act to generally revise bond release procedures under the Montana Strip and Underground Mine Reclamation Act; amending section 82-4-232, MCA.....Page 518
289		784	Holliday	An act to generally revise strip mine permit application review procedures; revising time frames; amending section 82-4-231, MCA. .....Page 522
290		786	Nathe	An act to generally revise laws relating to bid deposits for state surface leases; allowing forfeiture of deposits for frivolous, forged, bad faith, or harassment bids; and amending section 77-6-203, MCA. .....Page 528

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292	261		Lynch	An act to eliminate the use and ownership restriction for golf courses to be taxed at one-half the rate of other class four property; amending section 15-6-134, MCA; and providing an immediate effective date and an applicability date.....Page 529
293	272		Mohar	An act clarifying the eligibility and license compliance provisions related to the development of hydroelectric power generation at state-owned water projects; providing for a power generation negotiation process; amending sections 85-1-503 and 85-1-506, MCA; and providing an immediate effective date.....Page 531
294		292	O'Connell	An act providing a minimum monthly benefit allowance for certain retired highway patrolmen and their beneficiaries; providing funding for the minimum monthly benefit allowance through increased employee and employer contributions; amending sections 19-6-402 and 19-6-404, MCA; and providing an effective date.....Page 532
295		809	Fritz	An act limiting the requirement that expenses for appointed counsel in a criminal proceeding be borne by a state agency to situations in which the state agency prosecutes the charge; amending sections 46-8-114 and 46-8-201, MCA; and providing an effective date. .....Page 533
296	251		Towe	An act exempting from certain financing requirements projects that are not to be guaranteed or secured by the Montana Economic Development Board; changing hearing notification requirements; amending sections 17-5-1526 and 17-5-1527, MCA; and providing an immediate effective date.....Page 534
297	363		E. Smith	An act expanding the repurchase of inventory requirements of canceled dealership contracts to include canceled distribution contracts; defining "distribution contract", "dealership contract", and "wholesaler"; amending sections 30-11-701, 30-11-702, 30-11-704, and 30-11-711 through 30-11-713, MCA. .....Page 537
298	384		Shaw	An act permitting a District Judge or Supreme Court Justice who was a member of the Public Employees' Retirement system before December 31, 1984, to remain a member of that retirement system rather than join the judges' retirement system; amending section 19-5-301, MCA; and providing an effective date.....Page 539
299		549	Cobb	An act to generally clarify certain laws relating to school district finance and budget procedures; amending sections 20-3-106, 20-3-331, 20-9-333, 20-9-335, 20-9-348, 20-9-351, and 20-9-805, MCA; and providing an immediate effective date.....Page 540
300		587	Gould	An act providing for the transfer or exchange of convicted offenders under the provisions of treaty agreements with foreign countries. .....Page 544
301		658	Ramirez	An act to establish a joint underwriting association for medical liability insurance; and providing a termination date.....Page 545
302	103		Jacobson	An act revising the laws relating to disability insurance by including licensed social workers in the provisions regarding freedom of choice of practitioners and coverage for mental illness, alcoholism, and drug addiction; amending sections 33-22-111 and 33-22-702, MCA. .....Page 550
303	159		Fuller	An act to increase the amount that a retiree may earn in covered employment under the Public Employees' Retirement System before receiving a reduction in his retirement allowance; changing the rate at which a retiree's allowance will be reduced after his earnings exceed this amount; clarifying exclusions to membership under the retirement system; amending sections 19-3-403 and 19-3-1106, MCA; and providing a retroactive applicability date and an immediate effective date. .....Page 551
304	197		Yellowtail	An act to amend the laws relating to fishing, hunting, trapping, and camping licenses as they relate to various classes of licensees; amending sections 23-1-105, 87-2-111, 87-2-403, 87-2-506, and 87-2-805, MCA; and providing an immediate effective date.....Page 554

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306	212		Eck	An act allowing the Governor to enter into agreements with states and relevant federal agencies to maintain or augment service of Amtrak; providing authority to enter into such agreements as provided in 45 U.S.C. 563(b); amending section 60-11-201, MCA; and providing an effective date.....Page 558
307	282		Farrell	An act authorizing the Department of Commerce to establish expiration dates for the licenses of social workers, speech pathologists, and audiologists; amending section 37-1-101, MCA.....Page 558
308	306		Haffey	An act requiring audits of the loans and investments of the Montana Economic Development Board by the bank examiners of the Department of Commerce and the Legislative Auditor; and amending sections 17-5-1529, 17-5-1649, and 17-6-321, MCA.....Page 559
309	310		Jacobson	An act to include community homes for developmentally, mentally, or physically disabled persons who require nursing care in the definition of a community residential facility; amending section 76-2-411, MCA. .....Page 560
310	345		Neuman	An act creating the "Anhydrous Ammonia Facilities Safety Act"; requiring the Department of Agriculture to adopt rules regulating anhydrous ammonia facilities; allowing an increase in anhydrous ammonia inspection fees for administration and enforcement; and amending sections 80-10-207 and 80-10-303, MCA. .....Page 561
311		136	Ellison	An act allowing operation of a motorboat for 20 days after transfer of ownership from a registered boat dealer or manufacturer without display of required numbers and decal; eliminating the special penalty provision for failure to display numbers and decal to make violation punishable as a misdemeanor under the general penalty provision; amending section 23-2-511, MCA; and providing an immediate effective date.....Page 565
312		167	Asay	An act to revise the registration period for motorboats and the licensure period for motorboat dealers; amending sections 23-2-512, 23-2-513, and 23-2-515, MCA; and providing an immediate effective date and an applicability date. .....Page 566
313		177	Ream	An act to make the interest rate on property taxes paid by a redemptioner the same as the rate on delinquent property taxes generally; requiring that any interest in excess of 8 percent collected by the County Treasurer on a redemption from a tax sale be deposited in the county general fund; amending section 15-18-102, MCA; and providing an effective date and an applicability date.....Page 569
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316		401	Manuel	An act making a raw milk testing program a discretionary rather than mandatory function of the Department of Commerce; amending section 81-23-105, MCA.....Page 572
317		469	Zabrocki	An act revising the method for determining the property tax reduction on destroyed property; amending section 15-16-611, MCA; and providing an immediate effective date and an applicability date.....Page 573
318		476	Spaeth	An act amending section 3-10-303, MCA, to expand the concurrent jurisdiction that the Justice's Court has with the District Court in misdemeanor cases.....Page 574
319		487	Wallin	An act authorizing the health facility authority to issue bonds and notes in an amount not to exceed $150 million in each biennium; amending section 90-7-302, MCA; and providing an immediate effective date.....Page 575
320		505	Nathe	An act to clarify that towns and cities of the second and third class are governed by the annexation provisions of sections 7-2-4321 through 7-2-4325, MCA; amending sections 7-2-4321 and 7-2-4325, MCA.....Page 576

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322		557	D. Brown	An act to consider as residents for the purpose of obtaining fishing and hunting licenses those nonresidents who meet certain conditions, including being employed in Montana for at least 12 months a year and paying taxes in Montana; amending sections 87-2-102 and 87-2-106, MCA.....Page 578
323		570	Mercer	An act revising the law concerning the frequency of fire safety inspections; expanding inspections to cover violations of rules; amending section 50-61-114, MCA.....Page 580
324		573	Peterson	An act providing for odometer disclosure upon transfer of motor vehicle ownership; providing penalties; amending section 61-3-201, MCA. .....Page 581
325		586	Gould	An act to authorize the confiscation and disposal of contraband possessed by inmates or residents of adult or youth correctional institutions; providing an immediate effective date.....Page 584
326		623	Wallin	An act revising the procedure for issuing health facility bonds; providing that bond proceeds may not be expended for a facility unless it has been reviewed and approved by the appropriate authorities; amending section 90-7-303, MCA; and providing an immediate effective date and an applicability date.....Page 584
327		629	Pavlovich	An act reallocating money from fines collected from persons apprehended or arrested by a Sheriff or Deputy Sheriff for a motor vehicle violation; amending sections 61-12-701 and 61-12-702, MCA..Page 585
328		655	Peck	An act requiring the appropriation of administrative expenses for the Public Employees' Retirement System, Teachers' Retirement System, and the rural rehabilitation program; providing that increases in such administrative expenses must be approved through the budget amendment process; amending sections 19-3-805, 19-4-606, and 80-2-102, MCA; and providing an effective date.....Page 586
329		692	Janet Moore	An act establishing a class of trapping license for youths 6 through 12 years of age; placing a minimum age restriction on other trapping licenses; amending sections 87-2-601 and 87-2-603, MCA; and providing an effective date.....Page 587
330		713	Wallin	An act to specifically include volunteer firefighters and officers of a nonprofit volunteer fire company in the "good samaritan" limits on liability; amending section 27-1-714, MCA.....Page 588
331		734	Grady	An act to prohibit the possession of both a Class A-5 and a Class A-7 elk license in the same year; increasing the fee for the Class A-7 tag to $10; amending section 87-2-501, MCA; and providing a delayed effective date.....Page 589
332		738	Addy	An act revising the Montana Medical Legal Panel Act by clarifying the definitions of "health care facility", "malpractice claim", and "physician"; clarifying the allocation of assessments and determination of assessments; providing for a late fee for delinquent assessments; clarifying the composition of the panel; clarifying the tolling of the statute of limitations against parties not parties to the claim and providing for dismissal of claims and the running of the statute of limitations; amending sections 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, and 27-6-702, MCA; and providing an immediate effective date.....Page 590
333		781	Spaeth	An act to give prosecutors the right to appeal from a Justice's or City Court to the District Court in certain cases, amending section 46-17-311, MCA.....Page 593
334		803	Peck	An act conforming juror and witness fees in courts not of record to those of courts of record; amending sections 3-15-203, 26-2-502, and 26-2-503, MCA.....Page 593
335		816	M. Williams	An act to specify the type of lettering used on the state flag; amending section 1-1-502, MCA.....Page 594
336		421	Brandewie	An act to allow the Department of Commerce to use unsalaried air search and rescue volunteers for whom the department must provide workers' compensation coverage; amending sections 39-71-118 and 39-71-401, MCA; and providing an immediate effective date..Page 595

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338	41		Towe	An act to clarify the distribution of income and earnings from coal severance tax funds by providing that a portion of those funds be included in the in-state investment fund; amending sections 17-6-305 and 17-6-306, MCA; and providing an immediate effective date and an applicability date.....Page 598
339	96		Gage	An act to clarify that the laws pertaining to seismic exploration apply to exploration done by means of nonexplosives as well as exploration done by means of explosives; to increase from 10 to 30 days the time required to respond to a County Clerk and Recorder's request for a record of operations; amending sections 82-1-101, 82-1-104, 82-1-107, 82-1-108, and 82-11-122, MCA.....Page 599
340	155		E. Smith	An act revising the laws relating to the sale of lands or waters, rental of office space, and procurement of construction projects by the Department of Fish, Wildlife, and Parks; amending sections 87-1-106 and 87-1-209, MCA; repealing section 87-1-211, MCA; and providing an immediate effective date.....Page 602
341	206		Haffey	An act revising the method of filing security interests in motor vehicles and snowmobiles; exempting vehicles constituting dealer inventory from perfection of security interests by notation on title; amending sections 23-2-612, 61-3-103, and 61-3-202, MCA.....Page 604
342	230		Tveit	An act to exempt public agencies from the Montana Human Rights Act and the Governmental Code of Fair Employment Practice to the extent that these laws conflict with the prohibition against nepotism in public agencies; amending sections 49-2-303, 49-2-403, and 49-3-201, MCA.....Page 607
343	422		Van Valkenburg	An act amending the law relating to state agency program budgets; requiring all agencies to provide specific goals and objectives and to require certain information relating to bonded indebtedness of the university system; amending section 17-7-111, MCA.....Page 609
344		635	Darko	An act to allow a school district to be reimbursed for nonbus mileage when a vehicle is driven by a bus driver to an overnight location of a school bus more than 10 miles from the school; amending section 20-10-141, MCA.....Page 611
345		698	Ream	An act further clarifying the information required in applications for metal mine operating permits; providing additional standards in the reclamation plan; specifying actions available to persons who are adversely affected by violations of metal mine reclamation provisions or who are allegedly harmed by metal mines damaging their water supply; and making certain minor changes; amending sections 82-4-335, 82-4-336, and 82-4-338, MCA.....Page 612
346	257		Daniels	An act to revise a time for trial limitation in the detainer law so that it conforms to the interstate agreement on detainers; amending section 46-31-101, MCA; and providing an immediate effective date. .....Page 617
347	357		B. Williams	An act removing the requirement that a business operated on the same premises as an establishment licensed to sell alcoholic beverages close off from 2 a.m. to 8 a.m. the part where alcoholic beverages are sold; amending sections 16-3-304 and 16-3-305, MCA; and providing an immediate effective date.....Page 623
348		799	M. Williams	An act to generally revise laws concerning Municipal and City Courts; expanding the exclusive jurisdiction of City Courts; making applicable to City Courts certain provisions concerning the conduct of Municipal Court business; permitting City Judges to solemnize marriages; requiring a person to display his driver's license or motor vehicle insurance card upon demand of a city or Municipal Judge; amending sections 3-11-103, 3-11-206, 40-1-301, 61-5-116, and 61-6-302, MCA....Page 624
349	130		Harding	An act to generally standardize notice requirements relating to the conduct of business of local government units other than municipalities; amending sections 7-2-2704, 7-2-2756, 7-4-2307, 7-5-2301, 7-6-2326, 7-6-2342, 7-6-2605, 7-8-101, 7-8-2212, 7-8-2216, 7-8-2302, 7-8-2511, 7-11-228, 7-12-2105, 7-12-2159, 7-13-145, 7-13-208, 7-13-2205, 7-13-2304, 7-13-2345, 7-13-2506, 7-14-2706, 7-14-2739, 7-14-4630, 7-15-2103, 7-16-2324, 7-21-3422, 7-22-2212, 7-22-2406, 7-22-2446, 7-33-2102, 7-34-2107, 7-34-2153, 7-34-2157, 7-34-2162, 7-35-2102, and 7-35-2115, MCA.....Page 627

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350	188		Towe	An act to clarify the manner in which benefits are paid to a police officer's surviving spouse or dependent child under the Municipal Police Officers' Retirement System; amending sections 19-9-104, 19-9-804, 19-9-903, and 19-9-911, MCA.....Page 639
351	239		Lybeck	An act revising the law on future advances under a mortgage; authorizing the use of mortgages to secure a line of credit with varying balances; amending section 71-1-206, MCA.....Page 642
352	242		E. Smith	An act transferring from the Department of Administration to the Department of Commerce the functions relating to the state building codes; amending sections 20-6-621, 20-6-622, 50-3-103, 50-60-101, 50-60-504, 50-60-505, 50-60-507 through 50-60-514, 50-60-603 through 50-60-607, and 50-64-102, MCA; and providing an effective date. .....Page 643
353	246		Pinsoneault	An act requiring income from state lands not held in trust to be credited to the general fund unless other disposition is provided by law; amending section 77-3-436, MCA.....Page 649
354	259		Van Valkenburg	An act removing the requirement that the State Prison Ranch repay general fund loans by the end of the fiscal year; amending section 17-2-107, MCA; and providing an effective date.....Page 650
355	278		Boylan	An act authorizing the city police to dispose of abandoned vehicles seized on city streets; amending sections 61-12-402 through 61-12-405 and 61-12-407, MCA.....Page 652
356	294		Crippen	An act to eliminate the spousal exemption in the criminal offense of sexual intercourse without consent; amending section 45-5-503, MCA. .....Page 654
357	307		Fuller	An act to clarify the jurisdiction and the authority of the County Tax Appeal Boards and the State Tax Appeal Board; amending sections 15-1-303, 15-10-304, and 15-23-104, MCA; and repealing section 15-8-305, MCA.....Page 655
358	333		Christiaens	An act to allow a creditor or secured party to record a lien or security interest and transfer title if the owner has not transferred title and registered the vehicle within the statutory 20-day grace period; amending sections 61-3-103, 61-3-201, and 61-3-202, MCA.....Page 657
359	341		Haffey	An act authorizing changes in working hours of Montana State Prison employees; repealing section 53-30-103, MCA.....Page 662
360	362		Haffey	An act to raise the state minimum wage to $3.05 an hour effective October 1, 1985, and to $3.35 an hour effective October 1, 1986, and thereafter; amending section 39-3-404, MCA.....Page 662
361	387		Lybeck	An act to allow police and emergency vehicles to carry a portable green signal light for purposes of designation as the on-scene command and control vehicle in an emergency or disaster; amending section 61-9-402, MCA.....Page 663
362	414		Towe	An act providing for the appointment of the public administrator or a conservator corporation as conservator of certain persons; amending sections 7-4-3004, 72-5-408, 72-5-410, and 72-15-301, MCA.....Page 664
363	454		Fuller	An act enabling county housing authorities and county governing bodies to assist in the provision and rehabilitation of rural dwellings for any low-income resident; amending sections 7-15-2121 and 7-15-2122, MCA.....Page 666
364	464		Severson	An act to exclude certain disability benefits from adjusted gross income in computing state income tax liability; amending section 15-30-111, MCA; and providing an immediate effective date and an applicability date.....Page 668
365		840	Hanson	An act providing that an oil, gas, or other mineral lessee must remove from county records any lease that is canceled or expired; providing a criminal penalty for failing to remove a forfeited, canceled, or expired lease; amending sections 45-2-311 and 82-1-201, MCA. .....Page 670
366	327		B. Brown	An act providing that whenever a vehicle is established to have been in violation of the law prohibiting the passing of a stopped school bus, the registered owner of the vehicle is prima facie responsible for the violation; providing a penalty for the violation; amending section 61-8-351, MCA.....Page 671

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369		228	Winslow	An act authorizing the preparation and implementation of a declaration instructing an adult's physician to withhold or withdraw life-sustaining procedures if the person is in a terminal condition and is unable to participate in medical treatment decisions; providing methods for revocation of the declaration; limiting the liability of physicians and health care providers who implement the declaration; and establishing criminal penalties for failing to comply with a declaration and for other related violations. ..... Page 675
370		259	Keenan	An act providing the Department of Social and Rehabilitation Services with rulemaking authority to establish penalties and sanctions applicable to providers of health-related services in counties that have opted for state assumption of county welfare; providing that such penalties and sanctions are the same as in the medicaid program; amending section 53-2-803, MCA. ..... Page 679
371		284	Harper	An act making the unemployment trust fund solvent; increasing the tax on employers, changing the method of computing the experience rating; changing benefit amounts; providing for disqualification if an employee leaves work without good cause attributable to his employment; amending sections 39-51-1108, 39-51-1213, 39-51-1215, 39-51-1218, 39-51-2104, 39-51-2201, and 39-51-2302, MCA; providing that certain sections of the act are retroactive; and providing effective dates and a termination date. ..... Page 679
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375		457	Nathe	An act providing that an undersheriff who was previously a deputy must return to other duties in the Sheriff's Department upon his replacement by another as undersheriff; and providing for the salary of such returning deputy; amending section 7-32-2102, MCA. ..... Page 691
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393		796	Quilici	An act providing a cost-of-living increase in service and disability retirement allowances and survivorship allowances paid to certain members of the Sheriffs' Retirement System or their beneficiaries; increasing the counties' contributions to the retirement system; amending section 19-7-404, MCA; and providing an effective date. .....Page 726

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395		860	D. Brown	An act authorizing the state library to implement and operate the natural resource information system and the natural heritage program; amending sections 2-15-1018, 90-15-101 through 90-15-103, 90-15-201, 90-15-202, and 90-15-301 through 90-15-304, MCA; and providing an immediate effective date. ....Page 729
396		875	Ramirez	An act revising the laws applicable to registration and voting by absentee ballot of electors in the United States service; amending sections 13-2-203, 13-2-212, 13-2-214, and 13-13-211, MCA; repealing section 13-2-213, MCA; and providing an immediate effective date. ....Page 732
397		893	Quilici	An act limiting the number of copies of the Administrative Rules of Montana to be provided to counties; removing the provision for providing a copy to the clerk of each court of record; amending section 2-4-313, MCA ....Page 733
398		354	Brandewie	An act abolishing state licensing of airports and other air navigation facilities; amending sections 67-3-101 and 67-3-104, MCA; repealing sections 67-3-301 through 67-3-306, MCA; and providing an immediate effective date. ....Page 735
399		396	Spaeth	An act clarifying the Department of Natural Resources and Conservation's authority to determine that an application for a beneficial water use permit is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use; amending section 85-2-310, MCA; and providing an immediate effective date and an applicability date. ....Page 737
400	81		Aklestad	An act disqualifying a person for unemployment benefits if his unemployment results from a strike except under certain circumstances; amending section 39-51-2305, MCA; and providing an immediate effective date. ....Page 739
401	187		Towe	An act clarifying the amount and payment of retirement benefits to a law enforcement officer who has service credits in both the Sheriffs' and Municipal Police Officers' Retirement Systems; revising the method of calculating a service retirement allowance based on more than 25 years of service; and defining the benefit available to beneficiaries upon the death of certain members under the Sheriffs' Retirement System; amending sections 19-7-101, 19-7-308, and 19-7-503, MCA; and repealing section 19-7-603, MCA ....Page 740
402	194		Manning	An act providing for the licensing of persons who use explosives in the demolition or construction of buildings or for certain other purposes; prohibiting such use of explosives unless licensed or under the supervision of a licensee; providing for licensing requirements and examinations; providing for licensure of persons licensed by other jurisdictions; providing for regulation of the use of explosives; granting rulemaking power to the Workers' Compensation Division; providing for discipline of licensees; and providing for civil and criminal penalties. ....Page 743
403	224		Van Valkenburg	An act to increase the bond debt limit of the Board of Housing to $975 million; amending section 90-6-111, MCA; and providing an immediate effective date. ....Page 747
404	226		Jacobson	An act to generally revise the law relating to the Board of Hearing Aid Dispensers; providing a continuing education requirement; revising the trainee license law; and giving the board authority to fine licensees. ....Page 748
405	296		Stimatz	An act to revise the examination grade requirements and reexamination procedures for a license to practice medicine; amending section 37-3-311, MCA; and providing an immediate effective date. ....Page 755
406	450		Christiaens	An act including consumer loan licensees in the definition of "regulated lender"; exempting consumer loan licensees from usury limits; amending sections 31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501, and 32-5-506, MCA ....Page 756

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407	350		Crippen	An act providing for the imposition of fines by the Securities Commissioner upon a finding that the Securities Act of Montana has been violated or upon the revocation or suspension of the license of a broker-dealer, salesman, or investment adviser; providing sanctions for failure to pay such fines; amending sections 30-10-201 and 30-10-305, MCA; and providing an immediate effective date.....Page 760
408	353		Lybeck	An act providing preference to employee-owned enterprises for loans under the Montana In-State Investment Act of 1983; amending sections 17-6-302 and 17-6-309, MCA.....Page 765
409	447		Manning	An act to amend section 39-51-2304, MCA, of the Montana unemployment insurance law to conform it to the Federal Unemployment Tax Act as required by federal law; and providing an immediate effective date.....Page 766
410		155	Harper	An act declaring it a felony to keep or train an animal with the intent that the animal be engaged in an exhibition of fighting with another animal, to allow or cause an animal to fight another animal, to permit a violation of this act to take place, or to aid, abet, or be knowingly present at such fighting between animals; providing penalties; amending section 45-8-211, MCA.....Page 768
411		186	Pistoria	An act allowing passage of county ordinances to control community decay caused by accumulation of rubble; and providing an immediate effective date.....Page 769
412		187	Harper	An act to authorize a District Court to award the Department of Health and Environmental Sciences the costs incurred by it to investigate and abate violations of the Public Water Supply Act; amending section 75-6-111, MCA; and providing an immediate effective date.....Page 770
413		263	Pistoria	An act requiring local governments and school districts to pay interest on overdue accounts.....Page 771
414		282	Menahan	An act to authorize the Fish and Game Commission to auction one male mountain sheep license each year; and to provide that money generated by such auction be used for the benefit of mountain sheep.....Page 773
415		683	Connelly	An act to authorize a county governing body to enact ordinances for the enforcement of county park board rules; to allow the county governing body to authorize a county park board to employ a county park warden; to provide that such a warden is not a peace officer; amending section 7-16-2322, MCA.....Page 773
416		764	Harp	An act to allow hunting by certain disabled persons from within a self-propelled vehicle and from within a vehicle parked on the shoulder, berm, or borrow-pit right-of-way of a public highway, except a state or federal highway; amending sections 61-8-369, 87-2-803, and 87-3-101, MCA.....Page 774
417		884	Driscoll	An act providing for consultation between the sponsor of a bill for which a fiscal note has been prepared and the budget director prior to distribution of a fiscal note; providing for a sponsor's fiscal note; amending section 5-4-204, MCA; and providing an immediate effective date.....Page 775
418	11		Neuman	An act revising laws concerning the unified investment program; removing certain restrictions on investment of public funds and providing a "prudent expert" standard for investment of public funds; amending sections 17-5-609, 17-5-619, 17-6-201, 17-6-203, 17-6-211, 17-6-305, 17-6-308, and 17-6-324, MCA; and providing effective dates.....Page 777
419	184		Mazurek	An act to extend to June 30, 1987, the sunset provision on section 2-9-107, MCA, limiting damages recoverable in tort suits against state and local governments; amending section 9, Chapter 675, Laws of 1983; and providing an immediate effective date.....Page 781
420	284		Towe	An act revising provisions for repayment of Coal Board loans; amending section 90-6-209, MCA.....Page 781
421	340		B. Brown	An act authorizing certain investments and deposits of public money in credit unions and savings and loan associations; amending sections 7-6-201, 7-6-203, 7-6-206, 7-6-208, 7-6-211, 7-6-4135, 7-7-2104, 7-12-2175, 7-12-4207, 17-6-101, 17-6-102, 17-6-104, 17-6-105, 17-6-211, 19-11-402, 20-9-213, 85-9-604, and 85-9-629, MCA.....Page 782

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422	409		Farrell	An act relating to medical examinations and expenses of Workers' Compensation claimants; amending sections 39-71-605 and 39-71-704, MCA.....Page 793
423		185	Pistoria	An act requiring the Department of Highways to erect signs indicating routes to postsecondary vocational-technical centers.....Page 795
424		216	Janet Moore	An act to clarify and revise the use of bid and contract performance security in state procurements of supplies and services; amending sections 18-1-201 and 18-4-312, MCA; and providing an immediate effective date.....Page 795
425		239	Wallin	An act to allow for the formation of multijurisdictional service districts among municipalities and counties to provide certain services allowed to be provided by local governments; providing for the creation, administration, and financing of such districts.....Page 797
426		260	Bardanouve	An act providing a formula for allocating Montana's private activity bond authority among the governmental units in the state having authority to issue such bonds; and providing an effective date.....Page 800
427		491	Zabrocki	An act relating to motor vehicle wrecking facilities' junk vehicle records and requirements for reporting to the Division of Motor Vehicles; amending sections 75-10-512 and 75-10-513, MCA.....Page 803
428		492	Peterson	An act to clarify the responsibility of a motor vehicle dealer regarding provision of information to the County Treasurer and Motor Vehicles Division upon transfer of a new motor vehicle by the dealer; amending section 61-4-112, MCA.....Page 804
429		520	Grady	An act clarifying that the public does not have the right to make recreational use of waters that have been diverted for purposes of appropriation.....Page 805
430		687	Fritz	An act to allow the adoption of schedules for the retention of finance-related records of counties and municipalities rather than requiring retention for specific time periods; requiring Department of Commerce approval of such schedules; amending sections 7-5-2132 and 7-5-4124, MCA.....Page 806
431		921	Thoft	An act removing the requirement that the Montana law enforcement academy be located at one of the units of the Montana university system; amending sections 44-10-103 and 44-10-202, MCA.....Page 807
432	91		Mazurek	An act to generally revi ·d clarify the provisions relating to venue by defining what county · proper place of trial for various parties and civil actions; amend. sections 2-9-312, 25-2-101 through 25-2-106, and 25-2-108, MCA; and repealing section 25-2-107, MCA.....Page 808
433	99		Lynch	An act to limit to the immediately previous year any back taxes or fees owed on a motor vehicle not registered or operated, regardless of the period elapsed since the previous registration; amending sections 15-8-202 and 61-3-303, MCA; and providing an immediate effective date and an applicability date.....Page 811
434	105		Regan	An act to require child support orders to include a provision covering health insurance in certain cases.....Page 813
435	181		Haffey	An act to generally revise and clarify provisions relating to local government study commissions; providing procedures for handling tie votes and write-in candidates for election to a study commission; providing for appointment of ex officio members; clarifying provisions relating to vacancies in office; providing that recommendations for service consolidations and transfers may be made to the electorate; amending sections 7-3-176 through 7-3-178, 7-3-185, 7-3-187, and 7-3-190, MCA; and providing an immediate effective date.....Page 814
436	334		Crippen	An act revising the nongame wildlife checkoff provisions on the state income tax form; allowing the Department of Revenue to deduct from collections from the checkoff for the nongame wildlife programs the administrative costs of the programs for fiscal years 1986 and 1987; amending sections 15-30-150 and 87-5-121, MCA.....Page 817
437	343		Halligan	An act to provide for a 5-year statute of limitations for the public contractors fees and tax; and providing an immediate effective date and an applicability date.....Page 819

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438	372		Gage	An act to require the County Treasurer to invest the money of any district as directed by the trustees of the district within 3 working days of such direction; amending section 20-9-212, MCA; and providing an immediate effective date. ....Page 820
439		26	Switzer	An act permitting local governing bodies to grant tax benefits for the reconstruction or expansion of existing buildings or structures; amending section 15-24-1501, MCA. ....Page 822
440		332	Bradley	An act revising the penalty for violation of laws relating to insurance responsibility of vehicle owners; providing for punishment of violations by a fine not exceeding $250 or imprisonment in a county jail for not more than 10 days, or both; amending section 61-6-304, MCA. ....Page 823
441		352	Nelson	An act amending section 3-5-302, MCA, to expand the concurrent original jurisdiction that the District Court has with the Justice's Court in certain criminal cases amounting to misdemeanor. ....Page 823
442		442	J. Brown	An act to provide that a paternity action may be brought by the child until 2 years after the child attains the age of majority and by an agency of the state until 2 years after an application is made under Title IV-D of the Social Security Act for services to the child; amending section 40-6-108, MCA. ....Page 824
443		472	Bradley	An act requiring licensed health care facilities to be inspected annually; deleting the requirement that facilities applying for license renewal submit reports documenting that they meet minimum standards; amending section 50-5-204, MCA. ....Page 825
444		531	Kennerly	An act clarifying the authority of the Division of Motor Vehicles to issue probationary licenses and providing a penalty for violation of restrictions set forth thereon; amending sections 61-2-302 and 61-11-101, MCA ....Page 826
445		721	Cobb	An act to generally revise and clarify certain business and nonprofit corporation laws; amending sections 35-1-213, 35-1-303, 35-1-304, 35-1-911, 35-1-928, and 35-2-210, MCA ....Page 828
446	308		Blaylock	An act revising voter registration laws; amending sections 13-2-102, 13-2-203, 13-2-301, and 13-2-401, MCA ....Page 832
447		277	Manuel	An act allowing counties to establish and fill the position of jail administrator or to enter into agreements under which private parties will build, maintain, or operate jails; providing for financing of jails; and amending sections 7-7-2201, 7-7-2203, 7-32-2121, 7-32-2123, 7-32-2132, 7-32-2201, 7-32-2202, 7-32-2204 through 7-32-2207, 7-32-2209, 7-32-2212, 7-32-2221, and 7-32-2222, MCA. ....Page 835
448	208		Towe	An act to provide loan guaranty authority to the Agricultural Loan Authority; creating an agricultural loan guaranty fund; amending section 80-12-103, MCA; and providing an immediate effective date. ....Page 843
449	214		Mazurek	An act permitting certain dental hygienists to administer local anesthetic agents; removing the requirement that an applicant for a license to practice dental hygiene submit to an oral interview; amending sections 37-4-401 and 37-4-402, MCA; and providing effective dates. ....Page 845
450	249		Boylan	An act to tax cigarettes sold in packages of more than 20 cigarettes on a per cigarette basis; amending sections 16-11-111 and 17-5-408, MCA; and providing an effective date. ....Page 847
451		200	Waldron	An act to extend until 30 days after occupation of the Montana State Prison addition the early parole provisions used to relieve prison overcrowding; changing, as of 30 days after completion of the Montana State Prison addition, the population figures that will be applied in the early parole provisions; amending section 46-23-201, MCA; repealing section 2, Chapter 235, Laws of 1983; and providing effective dates. ....Page 848
452		315	Rehberg	An act to prorate taxes on common elements of a condominium project and common elements serving lots in a residential or commercial project; amending section 70-23-801, MCA; repealing sections 70-23-701 through 70-23-703, MCA; and providing an immediate effective date and an applicability date. ....Page 849

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453		670	Iverson	An act to require reclamation of land disturbed by hard-rock tailing, waste rock, or ore processing operations; amending sections 82-4-303, 82-4-304, 82-4-335 through 82-4-337, 82-4-340, 82-4-351, and 90-6-302, MCA.....Page 851
454		747	Phillips	An act amending section 61-5-104, MCA, to extend the exemption from the requirement to possess a Montana driver's license to certain persons associated with the armed forces of the United States. .....Page 858
455		818	Patterson	An act authorizing a county to contribute money from the mill levy for the support of museums to public museums not owned by the county; amending sections 7-16-2202 and 7-16-2205, MCA; and providing an effective date. .....Page 859
456		858	Harrington	An act to establish local and regional port authorities; to provide for a tax levy for the operation thereof; to provide for port commissioners; to provide for the general power of a port authority; to provide for issuance of bonds and for establishment of operation and use privileges; to provide for rules in connection with a port authority; to provide for acceptance of federal aid for ports; and to provide for county and municipal cooperation in regard to port operation; amending section 67-10-402, MCA. .....Page 860
457	12		Haffey	An act to include the university system and the legislative and judicial branches of state government in budget amendment procedures; amending section 17-7-404, MCA; and providing an effective date. .....Page 868
458	55		Towe	An act limiting the time within which an action may be commenced to determine the validity of a royalty interest of a county in land acquired by tax deed; amending sections 15-17-312 and 27-2-210, MCA; and providing an applicability date. .....Page 869
459	57		Conover	An act providing for the attachment of a donor's statement under the Uniform Anatomical Gift Act to the back of the motor vehicle operator's or chauffeur's license; amending sections 61-5-301 and 72-17-204, MCA.....Page 871
460	88		Aklestad	An act requiring a city under certain circumstances to dissolve its police retirement fund, to pay the state's prior contributions to the general fund, and to transfer any money remaining in the fund to the city general fund; amending section 19-10-202, MCA; and providing an immediate effective date.....Page 872
461	95		Lynch	An act to conform to federal law the provisions of the unemployment insurance law relating to the source of funds for Department administrative expenses; amending sections 39-51-201 and 39-51-404, MCA; and providing an immediate effective date. .....Page 873
462	156		Towe	An act changing the designation criteria for Coal Board grants and loans; amending section 90-6-207, MCA.....Page 877
463	234		E. Smith	An act to direct the Department of Revenue to use certain substitutes for market value when appraising and assessing property for tax purposes; providing an exemption for certain properties; amending sections 15-6-201 and 15-8-111, MCA; and providing an effective date and an applicability date.....Page 879
464	247		Daniels	An act requiring a public employer to pick up a member's contributions under the Public Employees', Teachers', Highway Patrolmen's, Sheriffs', State Game Wardens', and Municipal Police Officers' Retirement Systems; requiring the employer to deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer; requiring a member to pay state and local taxes on a refund of his contributions; amending sections 15-30-111, 15-30-136, 19-3-105, 19-3-701, 19-4-101, 19-4-208, 19-4-602, 19-4-706, 19-4-707, 19-6-402, 19-6-705, 19-7-403, 19-7-705, 19-8-502, 19-8-805, 19-9-601, and 19-9-1005, MCA; and providing an effective date.....Page 882
465		184	Schye	An act to allow cash payment for bingo prizes; amending section 23-5-412, MCA.....Page 894
466	135		Mohar	An act to eliminate the requirement that the Board of Examiners approve change orders concerning the construction of buildings; amending section 18-2-103, MCA; and providing an immediate effective date.....Page 894

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467	136		Mohar	An act to require approval of the Board of Examiners only for the award of protested construction contracts or construction contracts not awarded to the low bidder; amending section 18-2-103, MCA; and providing an immediate effective date.....Page 896
468	229		Boylan	An act to establish a reciprocal preference law for bidders on construction projects; amending section 18-1-102, MCA; and providing an immediate effective date.....Page 897
469	233		Regan	An act to provide a 30-day life insurance settlement period after which interest accrues until settlement; amending sections 33-20-114, 33-20-115, and 33-20-1207, MCA.....Page 898
470	266		Halligan	An act allowing for the adjustment of boundaries of rural fire districts at the hearing on the petition to create such a district; requiring such adjustments to be made in response to written requests received prior to or on the date set for the hearing; amending section 7-33-2103, MCA.....Page 900
471	281		Fuller	An act limiting the amount of a permanent total benefits lump-sum workers' compensation payment by discounting it by 7 percent, compounded annually; providing a method for determining whether a lump-sum payment will be granted; amending sections 39-71-741, 39-71-2109, and 39-71-2207, MCA; and providing an applicability date, retroactive effect clause, and an immediate effective date.....Page 900
472	300		Himsl	An act requiring the Legislative Auditor to conduct an audit of each state agency every 2 years and to conduct special audits when determined necessary; amending section 5-13-304, MCA; and providing an immediate effective date.....Page 903
473	301		Conover	An act revising payment deadlines and related enforcement procedures for state leases; amending section 77-6-506, MCA.....Page 904
474	316		Hirsch	An act to revise the annexation provisions of the community college laws to provide for transition in trustee representation and for a means of disannexation; amending section 20-15-231, MCA...Page 905
475	329		Regan	An act clarifying provisions relating to freedom of choice of medical assistance provided through the Department of Social and Rehabilitation Services; amending section 53-6-104, MCA.....Page 906
476	332		Towe	An act providing for confidentiality of library records; amending sections 2-6-101 and 2-6-102, MCA.....Page 907
477	385		Crippen	An act authorizing the Board of Regents to lease land to a private nonprofit foundation for the construction of a stadium at the University of Montana and exempting the construction from certain laws governing public construction contracts; and providing an immediate effective date.....Page 909
478	399		Crippen	An act to generally revise the laws relating to securities; amending sections 30-10-103 through 30-10-105, 30-10-201, 30-10-206, 30-10-209, and 30-10-305, MCA; and providing an immediate effective date. .....Page 910
479	408		Thayer	An act to exempt transactions by capital companies from salesman and issuer registration provisions of the Securities Act of Montana; amending section 30-10-105, MCA; and providing an immediate effective date.....Page 923
480	440		B. Williams	An act to allow employers to operate as self-insured under the Workers' Compensation Act by forming groups to be certified as self-insured; amending sections 39-71-117, 39-71-2103, and 39-71-2106, MCA.....Page 926
481	461		Fuller	An act authorizing counties, cities, consolidated cities and counties, towns, and school districts to issue tax and revenue anticipation notes to be sold at par or discount at public sale or at private sale to the Montana Economic Development Board under the provisions of the Municipal Finance Consolidation Act; providing that the purchase of such notes and issuance of notes by the board for such purchase are exempt from the dollar limitations contained in the Municipal Finance Consolidation Act; deleting the loan limitation in section 17-5-1608(1), MCA; providing for the responsibilities of the County Treasurers in the issuance of such notes by school districts; exempting the tax and revenue anticipation notes from the debt limitations on such local governments; amending sections 17-5-1606, 17-5-1608, 17-5-1611, and 20-9-212, MCA; and providing an immediate effective date.....Page 928

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482		333	Bradley	An act allowing a Justice of the Peace to designate a qualified person to act in his place whenever he is sick, disabled, or absent; amending section 3-10-231, MCA. ....Page 934
483		340	Ramirez	An act to generally revise the law pertaining to disposition of personal property abandoned by a tenant after termination; amending section 70-24-430, MCA....Page 935
484	126		McCallum	An act to authorize general transfers of appropriations within county budgets for certain expenditure classes; amending section 7-6-2325, MCA; and providing an effective date. ....Page 936
485	160		Fuller	An act to allow transfer or revision of appropriations within or among municipal budgets for certain budget classes; amending section 7-6-4236, MCA; and providing an immediate effective date. ...Page 937
486	167		Regan	An act to clarify that school districts can charge fees for courses or activities not reasonably related to a recognized academic goal of the district; amending section 20-9-214, MCA. ....Page 937
487	255		Galt	An act to provide for the use of muzzleloaders in shotgun-only hunting areas; amending section 87-1-304, MCA; and providing an immediate effective date. ....Page 938
488	265		Mohar	An act generally revising the law regarding leasing of state-owned city and town lots and land valuable for commercial development; eliminating the requirement that state leases of land are subject to sale; clarifying that commercial property may be leased for the same period as city and town lots; extending the maximum lease period from 25 to 40 years; amending sections 77-1-204, 77-6-102, 77-6-109, 77-6-205, and 77-6-503, MCA; and repealing section 77-6-106, MCA.....Page 939
489	380		Thayer	An act providing for the sale of deeds for square inches of land in Montana to raise revenue for Montana statehood centennial activities; providing for the designation of state land of the Department of Fish, Wildlife, and Parks and acceptance of donations of land from private donors; providing for the Montana statehood centennial office to administer the sale of deeds; providing for the title received by deed holders and reservation of valuable interests in the state; providing for the administration of the act; and providing an immediate effective date....Page 941
490	415		Harding	An act providing an option for local departments or boards of health to review certain subdivisions; providing additional administrative and judicial remedies; amending sections 76-4-102, 76-4-104 through 76-4-109, 76-4-121 through 76-4-127, and 76-4-130, MCA; and providing an effective date....Page 944
491	423		Halligan	An act requiring financial institutions to disclose to depositors the time periods in which funds will be available. ....Page 951
492	433		Norman	An act limiting the liability of medical examiners and physicians who perform autopsies at the request of a federal agent investigating a death within a federal jurisdiction; amending sections 44-3-401 and 46-4-104, MCA....Page 952
493		298	Eudaily	An act permitting a retired member of the Teachers' Retirement System who is receiving an optional retirement allowance to designate a different beneficiary, select a different option, or convert his optional retirement allowance to a regular retirement or disability allowance under certain circumstances; amending section 19-4-702, MCA; and providing an immediate effective date. ....Page 953
494		331	Quilici	An act authorizing the issuance of special license plates to members of the reserve armed forces of the United States of America; amending section 61-3-446, MCA; and providing a delayed effective date. ....Page 954
495		710	Kadas	An act allowing an identification card to be issued to a person whose driver's license is suspended; amending section 61-12-501, MCA. ....Page 955
496	152		B. Brown	An act to provide a presumption in favor of joint custody if in a child's best interests; providing standards for establishing residency; amending section 40-4-224, MCA....Page 955

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497	258		Tveit	An act revising the law relating to compensation payable for surface damage by oil and gas development; providing double damages for failure to make stipulated damage payments; requiring an oil and gas developer or operator to notify the surface owner of his specific intentions before commencing drilling operations; amending sections 82-10-503, 82-10-504, and 82-11-122, MCA.....Page 956
498	273		Thayer	An act establishing contract requirements for the construction, repair, alteration, improvement, maintenance, rehabilitation, or reconstruction of a state water project; amending section 18-2-201, MCA; and providing an immediate effective date.....Page 958
499	326		Himsl	An act providing that ground water may be appropriated only by a person who is or has the consent of the exclusive owner of the ground water development works; amending section 85-2-306, MCA..Page 960
500	354		Mazurek	An act to clarify that the conveyance of one or more parts of a building is not a subdivision; amending section 76-3-204, MCA; and providing an immediate effective date.....Page 961
501	369		Neuman	An act to provide for the safety of dams and reservoirs; amending sections 85-15-101, 85-15-102, and 85-15-104, MCA; and repealing section 85-15-103, MCA.....Page 962
502	402		Fuller	An act authorizing a lump-sum advance settlement in certain workers' compensation cases; providing that the workers' compensation judge has jurisdiction over a settlement controversy; and amending section 39-71-737, MCA.....Page 967
503	406		Lynch	An act to generally revise the laws relating to the internal organization of the Department of Justice; substituting the terms "Department of Justice" or "department" for terms relating to specific divisions or bureaus within the department; amending sections 2-15-2005, 44-2-111, 44-3-104 through 44-3-106, 44-3-201, 44-3-303, 53-4-505, and 61-3-108, MCA; and repealing sections 2-15-2002 through 2-15-2004, 44-2-101, 44-2-102, and 44-3-103, MCA. ...Page 968
504		95	Ramirez	An act providing that an action for lack of good faith in handling or settlement of a claim must be tried separately from a trial of the underlying claim; and providing an applicability date.....Page 971
505		183	Ellerd	An act to require that a nonsmoking area be designated in each enclosed work area maintained by the state or a political subdivision thereof; amending section 50-40-104, MCA.....Page 972
506		323	Jack Moore	An act providing a civil penalty for shoplifting.....Page 972
507		363	Marks	An act limiting punitive damages in civil actions; amending section 27-1-221, MCA; and providing an applicability date and an immediate effective date.....Page 973
508		420	Schye	An act increasing allowable license fees of aircraft, airmen, and instructors; amending section 67-3-101, MCA.....Page 975
509		436	Lory	An act requiring membership of one conservation district board member on each city-county planning board in the state; and providing an exception; amending section 76-1-201, MCA.....Page 976
510		474	Pavlovich	An act clarifying the requirements to qualify for a mortician's or intern mortician's license; providing that violation of rules on unprofessional conduct adopted by the board may be grounds for refusing to grant, suspending, or revoking a mortician's or funeral director's license; amending sections 37-19-302, 37-19-304, and 37-19-311, MCA. .....Page 977
511		488	Iverson	An act to establish a Montana-Western Canadian Provinces Boundary Advisory Committee; and providing an immediate effective date. .....Page 979
512	283		Galt	An act to generally revise the bonding programs of the Department of Natural Resources and Conservation; to generally revise and clarify the laws relating to the water development program; to authorize county water or sewer districts, rural special improvement districts, and the Board of Examiners to issue temporary obligations in anticipation of the issuance of bonds; to generally revise and clarify the laws relating to the renewable resource development program to make it compatible with the water development program; amending sections 7-7-109, 17-5-703, 17-5-711, 17-5-713 through 17-5-715, 17-5-718, 85-1-332, 85-1-604, 85-1-605, 85-1-610, 85-1-617, 85-1-619, 85-1-623, 90-2-121, 90-2-123, and 90-2-125, MCA; and providing an immediate effective date and a retroactive applicability date.....Page 980

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
513	309		Mohar	An act allowing a tax credit for the installation of low emission wood or biomass combustion devices; extending the date for which the energy tax credit may be taken to December 31, 1992; amending sections 15-32-102, 15-32-201, and 15-32-203, MCA; and providing an immediate effective date and an applicability date.....Page 991
514	337		Blaylock	An act modifying the procedure for collecting unpaid unemployment compensation contributions; amending sections 39-51-1303 and 39-51-1304, MCA.....Page 993
515	420		Van Valkenburg	An act amending the law relating to the identification or segregation of moneys or funds in the state fund structure; requiring each federal grant or other federal money within the governmental, proprietary, and fiduciary fund categories or within a subfund or account of such funds to be identifiable within the fund; requiring accountings of the income and expenditures of such grant money; providing a transition period for federal highway funds; providing that taxes collected by the state for distribution to local governments are to be accounted for in the state special revenue fund; amending section 17-2-103, MCA; and providing an effective date.....Page 994
516		101	D. Brown	An act to generally revise the laws relating to motorcycles; replacing the present taxation of motorcycles with a fee in lieu of tax; defining "quadricycle"; making motorcycle laws applicable to quadricycles; amending sections 15-6-138, 15-6-201, 15-8-111, 15-8-201, 15-8-202, 15-24-301, 15-30-121, 15-31-114, 15-50-207, 31-1-202, 45-6-308, 61-3-301, 61-3-303, 61-3-313, 61-3-321, 61-3-332, 61-3-402, 61-3-403, 61-3-501, 61-3-503, 61-3-504, 61-3-509, 61-3-701, 61-4-101 through 61-4-103, 61-5-106, 61-5-107, 61-5-110, 61-5-111, 61-6-303, 61-8-359, 61-9-203, 61-9-205, 61-9-206, 61-9-220, 61-9-225, 61-9-303, 61-9-304, 61-9-309, 61-9-312, 61-9-417, 61-9-418, and 61-9-421, MCA; and providing an effective date.....Page 995
517		121	Nathe	An act directing the Public Service Commission to prescribe a declining block rate structure for electric service when cost-justified; clarifying the requirements for the design of utility rates; amending section 69-3-306, MCA.....Page 1029
518		235	Peck	An act to require an anesthesiologist, anesthetist, or other trained professional to administer and monitor general anesthetics during dental procedures; to grant the Board of Dentistry authority to adopt rules regulating dental anesthetics and dental advertising; amending sections 37-4-101 and 37-4-205, MCA; and providing immediate and delayed effective dates.....Page 1029
519		338	Addy	An act to generally revise the laws relating to title insurance; providing for the licensing and regulation of title insurance agents and the regulation of controlled business in the title insurance industry; amending sections 33-2-108, 33-2-851, 33-17-212, 33-17-213, 33-17-1101, and 33-17-1102, MCA; and repealing section 33-25-103, MCA.....Page 1032
520		426	Spaeth	An act to establish conditions under which a stay of an agency decision may be granted; amending section 2-4-702, MCA; and providing an immediate effective date.....Page 1043
521		445	J. Brown	An act providing that if a person obligated to pay child support becomes delinquent in an amount equal to the total of 6 months' support payments, the court may order the obligated person to post bond or other security in an amount up to the total of 2 years' support payments.....Page 1044
522		475	Manuel	An act modifying the authorized activities of credit unions; authorizing certain societies, partnerships, and corporations to obtain loans from credit unions; removing the restriction against providing checking account services; authorizing credit unions to serve as custodians or trustees of retirement accounts and pension or profit-sharing plans; authorizing credit unions to act as fiscal agents for federal, state, and local governments; giving credit unions the option of appointing, electing, or not having a supervisory committee; modifying the duties of credit union directors to purchase fidelity bonds; modifying the law of credit union shares and accounts; providing credit unions the option of obtaining plans of private share insurance; amending sections 32-3-206, 32-3-305, 32-3-401, 32-3-403, 32-3-412, 32-3-417, and 32-3-611, MCA.....Page 1045
523	322		Towe	An act allowing interest on a tort to accrue beginning from the date 30 days after the claimant presented a written statement to the opposing party stating the claim.....Page 1050

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524	412		E. Smith	An act to require 30 days to be served under a sentence for committing certain criminal offenses amounting to child abuse; amending section 46-18-201, MCA. ..... Page 1051
525		293	Bardanouve	An act to provide a civil penalty for failure to acknowledge a lien satisfaction. ..... Page 1053
526		310	Waldron	An act allowing abused family or household members to obtain self-help temporary restraining orders; making violation of an order a criminal offense; directing the attorney general to prepare and distribute forms and instructions for restraining orders; amending sections 27-19-201, 27-19-315, 27-19-316, and 40-4-106, MCA. ..... Page 1053
527		389	Eudaily	An act permitting a retired member of the Public Employees' Retirement System who is receiving an optional retirement allowance to designate a different contingent annuitant, select a different option, or convert his optional retirement allowance to a regular retirement allowance under certain circumstances; amending section 19-3-1101, MCA; and providing an immediate effective date. ..... Page 1057
528		423	Gilbert	An act providing that aircraft landings and takeoffs from public waters and roads are lawful; amending section 67-1-204, MCA; and providing an immediate effective date. ..... Page 1058
529		424	Howe	An act to provide for a vehicle purchase sticker in a prescribed form as proof of purchase for purposes of the registration grace period; amending section 61-3-317, MCA. ..... Page 1059
530		462	Donaldson	An act to limit the marketing of furniture made in the Montana State Prison; amending section 53-1-301, MCA; and providing an effective date. ..... Page 1060
531		489	Waldron	An act to generally revise the laws relating to residential youth care facilities; to require prior consultation with the Department of Social and Rehabilitation Services for placement of youths in residential youth facilities; and amending sections 41-3-1102 through 41-3-1104, 41-3-1122, 41-5-403, and 41-5-523, MCA. ..... Page 1062
532		517	Hansen	An act to permit the clerk of the District Court to charge a $2 handling fee for each child support payment processed; amending sections 40-4-206 and 40-5-125, MCA; and providing an applicability date. ..... Page 1068
533		541	Darko	An act providing that a party who unreasonably and vexatiously multiplies legal proceedings is responsible for payment of increased court costs, attorney fees, and other expenses and losses resulting from such conduct. ..... Page 1069
534		602	Fritz	An act defining the relationship between an artist and an art dealer; providing that a consignment relationship is created; providing that the dealer is a trustee and holds the artist's works and funds in trust; providing for notice of sales to the artist. ..... Page 1069
535		743	Miller	An act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provision of medical benefits on behalf of a person for whom a third party is liable; amending sections 53-2-612 and 53-3-103, MCA. ..... Page 1071
536		837	Pavlovich	An act providing for the offense of harming a police dog and prescribing penalties. ..... Page 1073
537		871	J. Brown	An act establishing the Montana Medal of Valor to be awarded by the Governor for acts of extraordinary courage. ..... Page 1074
538	89		Mazurek	An act revising the laws relating to garnishment of personal services earnings; amending section 25-13-614, MCA; and providing an immediate effective date. ..... Page 1075
539	331		Christiaens	An act to permit private enforcement of orders of the Human Rights Commission and to clarify the authority of the District Court when enforcing an order of the Human Rights Commission; amending sections 49-2-508 and 49-3-311, MCA; and providing an immediate effective date and an applicability date. ..... Page 1076
540	371		Mohar	An act prohibiting certain purchases and sales of grizzly bear parts; providing for disposition of seized grizzly bear parts; removing grizzly bear from the definition of game farm animals; providing for registration of certain grizzly bear parts; amending sections 87-1-511, 87-3-111, 87-4-406, and 87-4-702, MCA. ..... Page 1077

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541	375		Towe	An act providing for notice and a hearing prior to revocation of a mental health patient's conditional release status; amending section 53-21-183, MCA.....Page 1079
542	438		Towe	An act revising the qualification requirements of applicants for loans from the Montana Agricultural Loan Authority; reducing the bonding authority for beginning farmer loans; clarifying approval process for tax deduction to seller of agricultural land; amending sections 80-12-203, 80-12-204, 80-12-211, and 80-12-301, MCA; and providing an immediate effective date.....Page 1083
543		439	J. Brown	An act permitting consumer reporting agencies to obtain personal child support information from child support agencies; providing that the consumer reporting agency notify any person about whom child support debt information has been requested; requiring the department to adopt rules providing an opportunity to contest the debt amount of record; amending sections 31-3-152, 40-5-206, and 53-2-504, MCA; and providing an immediate effective date.....Page 1085
544		441	J. Brown	An act to permit docketing and enforcement of administrative child support orders in the District Court and to limit the modification of the support orders by the District Court; to allow the department to issue a warrant for distraint based upon the docketed administrative child support order; to delete the requirement for a second notice and hearing prior to execution on a filed warrant for distraint; amending section 40-5-241, MCA.....Page 1087
545		483	Spaeth	An act providing a procedure for dissolving county water and sewer districts; providing for a petition to dissolve the district; providing for a public hearing on the question; and requiring a determination that there are no outstanding debts of the district.....Page 1088
546		577	Bradley	An act allowing transition to competition in the telecommunications industry; defining "regulated telecommunications service"; amending sections 69-3-101, 69-3-201, and 69-3-321, MCA; and providing an immediate effective date.....Page 1089
547		639	Nathe	An act revising polygraph licensure laws by creating internship training; establishing a pre-test procedure; setting dates for license renewal; amending sections 37-62-101 and 37-62-204, MCA; and providing an immediate effective date.....Page 1095
548		649	Jack Moore	An act revising for administrative purposes the laws relating to regulation of the practice of denturitry; requiring the Board of Denturitry to meet at least twice a year and add a dentist to the board; abolishing the Fair Practice Committee; providing that funds collected by the board must be deposited to the state special revenue fund; abolishing provisions for payment of claims that are inconsistent with other state statutes; giving the Board of Denturitry general and specific rulemaking authority; clarifying the board's right to enter into recipro cal relations with other states and territories; giving the board additional authority to set and modify fees; giving the board authority to alter future renewal dates for licenses; giving the board authority to define by rule unprofessional conduct for the purpose of establishing disciplinary conduct standards; providing for review of contested case decisions of the board in conformity with the Montana Administrative Procedure Act; providing the board with authority to sue to enjoin the unlicensed practice of denturitry; providing for sunset review; providing procedures for making and fitting partial dentures and for making x-rays; making the provisions of Title 37, chapter 1, and Title 2, chapters 4 and 15, applicable to the powers and duties of the board; making reporting requirements of elderly abuse applicable to denturists; providing for advertising restrictions; amending sections 7 through 11, 13 through 15, 22, 26, and 27 of Initiative 97 and section 53-5-511, MCA; and providing an immediate effective date. .Page 1097
549		853	Krueger	An act requiring that certain state construction projects be performed by a work force consisting of at least 50 percent bona fide Montana residents; and providing an applicability date.....Page 1105
550	168		Haffey	An act to provide that whenever the office of County Superintendent of Schools is consolidated with another county office, the officeholder must contract for certain services of another County Superintendent if the officeholder does not have the qualifications for the office of County Superintendent; amending section 20-3-201, MCA....Page 1106

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551	183		Mazurek	An act requiring the remaining commissioners to fill a vacancy on the Board of County Commissioners; providing a procedure for filling such a vacancy; amending section 7-4-2106, MCA; and providing a delayed effective date.....Page 1107
552	320		Tveit	An act to require a County Treasurer to immediately remit to the State Treasurer for deposit in the state equalization aid account any surplus balance from the basic county levies for elementary and high school districts; to require a County Superintendent to apportion the basic county levy revenues to the districts on a monthly basis; amending 20-9-331, 20-9-333, and 20-9-334, MCA; and providing an effective date.....Page 1108
553	323		Hager	An act generally revising the laws concerning registration and regulation of professional engineers and professional land surveyors; revising requirements for the practice of engineering and land surveying by partnerships and corporations; authorizing emeritus status for former registrants; amending sections 2-15-1873, 37-67-101 through 37-67-103, 37-67-301, 37-67-303, 37-67-308 through 37-67-311, 37-67-313 through 37-67-315, 37-67-318, 37-67-319, 37-67-331, and 37-67-332, MCA.....Page 1111
554	451		Mazurek	An act providing for the fair and proper treatment of victims and witnesses in the criminal justice system; requiring the provision of services and assistance to crime victims and witnesses.....Page 1123
555		160	Grady	An act requiring the filing of records of mobile homes in a similar manner as those of motor vehicles; requiring filing of notice of intention to transfer title; amending section 61-3-101, MCA.....Page 1125
556		265	Ream	An act generally defining laws relating to recreational use of state waters; prohibiting recreational use of diverted waters; restricting the liability of landowners when water is being used for recreation; establishing the right to portage; providing that a prescriptive easement cannot be acquired by recreational use of surface waters; amending section 70-19-405, MCA; and providing an immediate effective date and an applicability date.....Page 1127
557		341	Miller	An act to provide civil liability for a person who wrongfully stops payment on a check, draft, or an order for the payment of money; amending sections 27-1-717 and 30-4-403, MCA.....Page 1132
558		346	Gilbert	An act providing that a percentage of taxes paid on automotive fuel being legally consumed in aircraft be placed in the aeronautics revenue fund of the Department of Commerce; amending section 60-3-201, MCA; and providing an effective date.....Page 1134
559		358	Kadas	An act to create a missing children information program within the Department of Justice; to require law enforcement authorities to submit missing children reports to the program; to require the Superintendent of Public Instruction to distribute monthly to the schools a list of missing school age children; and to require schools to contact any parent whose child is absent without parental verification of the absence.....Page 1135
560		412	Hayne	An act to clarify certain definitions used in school special education law; amending section 20-7-401, MCA.....Page 1137
561		440	J. Brown	An act to permit the Department of Revenue to enforce maintenance awards to custodial parents of children whose support is being enforced by the department; providing that the department is subrogated to the amount of public assistance paid to or for the benefit of a child and his caretaker up to the amount of the support award; amending sections 40-5-201, 40-5-202, and 40-5-255, MCA...Page 1140
562		454	Jenkins	An act to increase the salary of an elected County Superintendent of Schools who has a master's degree with an endorsement in school administration; amending section 7-4-2503, MCA; and providing an effective date.....Page 1143
563		522	Peck	An act providing for lawful service upon claimants or owners of certain property subject to forfeiture; amending sections 44-12-201 through 44-12-203, 81-5-104, and 81-5-106, MCA; and repealing section 81-5-105, MCA.....Page 1144
564		523	Raney	An act providing authority for state acquisition of abandoned railroad rights-of-way or easements therein for future transportation corridors; amending section 60-11-111, MCA.....Page 1147

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565		601	Thoft	An act exempting small irrigation districts from audit by the Department of Commerce; amending section 2-7-503; and providing an immediate effective date. ....Page 1148
566		611	Devlin	An act requiring that certain bears, wolves, tigers, mountain lions, or coyotes captured or held in captivity be permanently tattooed or otherwise permanently identified; providing a penalty; and providing compensation for damage caused by such animals held in captivity. ....Page 1149
567		673	Kadas	An act to change the time when a local government may bring a suit challenging the validity and constitutionality of a petition and proposed action; revising the provision relating to contents of the complaint in such a suit; providing for precedence of such a suit in the court; tolling the time limit for collection of signatures; and amending section 7-5-135, MCA. ....Page 1151
568		763	Menahan	An act to provide for special wild buffalo licenses and for regulation of special wild buffalo licenses; amending sections 87-2-101 and 87-2-701, MCA; repealing section 87-5-303, MCA; and providing an immediate effective date. ....Page 1151
569		889	M. Williams	An act to generally revise laws concerning Justices' Courts; applying the fee schedule for services performed by Sheriffs to constables; revising court fees in civil actions filed in Justices' Courts; permitting Justices' Courts to postpone trials for a maximum of 4 months for good cause; amending sections 3-10-702, 25-31-112, and 25-31-703, MCA. ....Page 1154
570		317	M. Williams	An act to clarify the definition of "livestock" for purposes of property taxation; amending sections 15-1-101, 15-6-136, 15-6-207, and 15-24-901, MCA. ....Page 1155
571		443	J. Brown	An act to require, in child support cases being enforced by the Department of Revenue, the withholding of the obligor's income whenever an arrearage occurs that is equal to or in excess of the amount of support payable for 1 month; to require the department to forward any child support payments to the obligee within 10 days of receipt of the payment from the obligor; and providing an effective date. ....Page 1157
572		571	Bergene	An act providing for the mandatory licensing and regulation of professional counselors; creating a communications privilege; providing penalties for violations; and requiring an insurer or health service corporation to offer, if requested, additional disability and health insurance coverage for work done by licensed professional counselors; amending sections 2-15-1854, 33-22-111, and 37-22-102, MCA; and providing an effective date. ....Page 1165
573		680	Iverson	An act revising state water policy to maximize Montana's interests in the interstate allocation of water; amending criteria for water appropriation and changes in appropriation; providing for a limited water leasing program; exempting water reservations from the leasing program; placing certain pipelines under the Montana Major Facility Siting Act; providing for water reservations in the Missouri River Basin; establishing a water resources data management system; creating a permanent water policy committee; repealing the ban on the use of water for coal slurry; amending sections 75-20-104, 75-20-202, 75-20-218, 75-20-303, 75-20-1202, 85-1-203 through 85-1-205, 85-1-621, 85-2-102, 85-2-112, 85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312, 85-2-316, 85-2-402, MCA, and section 7, Chapter 706, Laws of 1983; repealing section 85-2-104, MCA; and providing an effective date and an applicability date. ....Page 1172
574		711	Cohen	An act allowing a governing body of a county to prohibit the sale and distribution of certain phosphorus compounds used for cleaning purposes; requiring the Department of Health and Environmental Sciences to adopt a model rule; and providing a delayed effective date. ....Page 1194
575		778	Spaeth	An act revising the Workers' Compensation Act provisions relating to the amount of attorney fees, when they may be assessed, and the assessment method; amending section 39-71-612, MCA; and providing an immediate effective date. ....Page 1197
576		864	Fritz	An act providing that candidates' names need not be rotated on certain paper ballots required to be available where voting devices are used; providing that if the names are not rotated, their arrangement on the ballot must be determined by lot; amending sections 13-12-205 and 76-15-303, MCA. ....Page 1198

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577		506	Harper	An act establishing a noxious weed management trust fund; authorizing a noxious weed management advisory council; providing funding for noxious weed management programs; providing an immediate effective date.....Page 1199
578		621	Holliday	An act revising the law relating to asset valuation and bond requirements for grain dealers and warehousemen; permitting an alternative to the bonds; providing uniformity of the financial evaluation provisions for commodity dealers and warehousemen; requiring a 60-day notice of cancellation; amending sections 80-4-402, 80-4-504 through 80-4-506, 80-4-601, and 80-4-604, MCA.....Page 1202
579		791	Brandewie	An act providing restricted review requirements for minor subdivisions and other divisions of land; amending sections 76-3-505 and 76-3-609, MCA.....Page 1208
580		801	Jenkins	An act to provide that youth court costs be allocated among the counties in the district in proportion to the workload of the court attributable to each county; amending sections 41-5-104 and 41-5-704, MCA; and providing an immediate effective date and an applicability date. .....Page 1209
581		813	Schye	An act allowing a city council to set the date for the monthly report by the clerk on expenditures, liabilities, and appropriations; amending section 7-6-4241, MCA; and providing an immediate effective date. .....Page 1211
582		912	D. Brown	An act revising the hard-rock mining impact laws and related statutes; redefining "local government unit" and "large-scale mineral development"; making certain changes to impact plan submission requirements; providing for tax prepayment credits as specified in the impact plan; amending sections 2-15-1822, 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-309, and 90-6-311, MCA; and providing an effective date and an applicability date.....Page 1211
583	67		Gage	An act clarifying the taxation of sewage disposal systems and domestic water supply systems of all dwellings; exempting down-hole equipment in oil and gas wells from property subject to taxation; providing an immediate effective date and an applicability date.....Page 1220
584	140		Christiaens	An act to increase the amount of single-purpose county indebtedness authorized without a vote from $150,000 to $500,000; amending section 7-7-2101, MCA; and providing an immediate effective date. .....Page 1220
585		551	Rehberg	An act to establish a procedure for the creation of a new high school district.....Page 1221
586		558	Rehberg	An act making any freeholder eligible to approve or disapprove annexation of property by a municipality providing services and increasing the time allowed for receiving written expressions of approval or disapproval; amending section 7-2-4710, MCA.....Page 1223
587		574	Thomas	An act to allow public utilities regulated by the Public Service Commission to correct customer billing errors by back-billing no more than 6 months from discovery of the error; providing rulemaking authority; and providing an immediate effective date.....Page 1223
588		631	Keyser	An act to provide that an elector may request to vote by paper ballot where voting machines are used; to provide that the election administrator may provide paper ballots where voting devices are used; to define "voting machine"; amending section 13-17-305, MCA; and providing an effective date.....Page 1224
589		643	Thoft	An act to provide when a local government may and may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer, ownership, possession, discharge, transportation, or unconcealed carrying of firearms; repealing section 7-32-4305, MCA. .....Page 1225
590		706	Mercer	An act to clarify the arson law; amending sections 45-6-102 and 45-6-103, MCA.....Page 1226
591		750	Bardanouve	An act to generally revise and clarify the Montana Major Facility Siting Act; amending sections 75-20-202, 75-20-303, 75-20-402, and 75-20-501, MCA; repealing section 75-20-214, MCA; and providing an immediate effective date and an applicability date.....Page 1226

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592		768	Bradley	An act exempting apartments and other portions of buildings that are rented or leased from review as subdivisions; exempting subdivisions, including condominiums, that will be served by municipal water and sewage facilities in class 1 and class 2 municipalities from department review; amending sections 76-4-102, 76-4-103, 76-4-105, 76-4-111, 76-4-122 through 76-4-124, and 76-4-127, MCA.....Page 1230
593		774	Driscoll	An act revising the method for determining years of employment for the purpose of calculating longevity allowances and vacation leave credits for certain public employees; amending sections 2-18-304, 2-18-611, and 2-18-612, MCA; and providing an applicability date. .....Page 1234
594		788	Simon	An act requiring the Department of Administration to consolidate in a single, central location the offices of state agencies located in a city other than Helena whenever consolidation would result in cost savings; amending section 2-17-101, MCA.....Page 1236
595		817	Kitselman	An act to provide health insurance coverage to certain persons ineligible for coverage from traditional providers of health care benefits by establishing a Montana comprehensive health association and plan; to require participation in the association by each health service corporation, fraternal benefit society, insurance arrangement, and insurer providing health care benefits in this state; and providing effective dates. .....Page 1237
596		859	Ramirez	An act to allow in certain cases the transfer of responsibility for the conduct of hearings for water appropriation permits from the Department of Natural Resources to a District Court; amending sections 3-7-101, 3-7-223, 3-7-224, 3-7-501, 3-7-502, and 85-2-309, MCA; and providing an applicability date and an immediate effective date. .....Page 1246
597		894	Sands	An act providing that a water district may expand when it has excess water capacity in the same manner as a sewer district may expand when it has excess sewerage capacity; requiring consent of affected property owners; deleting the requirement that such expansion must be in unincorporated areas; amending section 7-13-2341, MCA. .....Page 1248
598		896	Iverson	An act revising the definition of permissible fireworks; providing for fireworks wholesaler permits; further regulating the use and sale of fireworks; amending sections 50-37-103 through 50-37-105, MCA; and providing an immediate effective date.....Page 1249
599		911	Hannah	An act providing specific requirements for posting of land for the purposes of the criminal trespass law; expanding the authority of wardens to enforce the criminal mischief, criminal trespass, and litter laws on private lands being used for recreational purposes; amending sections 45-6-201 and 87-1-504, MCA; and providing an immediate effective date.....Page 1251
600		460	Thomas	An act providing for the Department of Commerce to recover the costs of examination of state-chartered financial institutions; providing for rulemaking authority; providing that all funds collected as a result of assessments be deposited in the state special revenue fund; amending sections 31-1-221, 32-1-213, 32-1-215, 32-2-102, 32-2-110, 32-3-201, 32-5-201, and 32-5-403, MCA; and providing an immediate effective date.....Page 1252
601		529	Addy	An act delineating and expanding the causes of action and remedies available to an injured employee of an uninsured employer or to the employee's beneficiaries; amending sections 39-71-504, 39-71-508 through 39-71-510, and 39-71-2905, MCA.....Page 1256
602		563	Miller	An act generally revising the laws relating to cosmetology; providing for the licensure and regulation of manicurists, manicuring shops, and schools of manicuring; amending sections 37-31-101, 37-31-203, 37-31-301 through 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, and 37-31-331, MCA; and providing a delayed effective date.....Page 1259
603		579	Winslow	An act amending section 53-21-111, MCA, to require that a person requesting voluntary admission to the Montana State Hospital receive confirmation from a community mental health center that adequate treatment is unavailable in the community and to remove reference to financial ability to pay for services in the community; and providing rulemaking authority. .....Page 1267

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604		596	Donaldson	An act to exempt from corporation license tax provisions those farmers' market associations organized for the sole purpose of providing a retail outlet for vegetables, handicrafts, and other products produced by the seller; amending section 15-31-102, MCA; and providing an immediate effective date and an applicability date.....Page 1268
605		646	Rapp-Svrcek	An act defining "organic food" and requiring accurate labeling of organic food; providing for remedies; amending sections 50-31-103 and 50-31-203, MCA; and providing an effective date and an applicability date.....Page 1270
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609		820	Rapp-Svrcek	An act requiring purchase of a stamp to hunt waterfowl; requiring that money generated by the sale of stamps and related artwork be used for preservation and development of wetlands; requiring the appointment of an advisory council to advise the Department of Fish, Wildlife, and Parks on the use of money raised by the sale of stamps and artwork; and providing effective dates.....Page 1291
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611	106		Shaw	An act to allow a parent who is a shareholder of a closely held or family corporation to receive a reduction in any out-of-district tuition charge based on a percentage of the property taxes paid by the corporation for the support of the school district the child will attend; amending sections 20-5-303 and 20-5-313, MCA; and providing an effective date.....Page 1296
612	411		Towe	An act to generally revise the laws relating to the admission and evaluation of youths at the Montana Youth Treatment Center and Montana State Hospital; amending sections 41-5-523, 53-21-501, 53-21-505, and 53-21-506, MCA; repealing section 53-21-507, MCA; and providing an immediate effective date.....Page 1298
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615	66		Halligan	An act requiring consumer contracts to be written in plain language; providing for coverage, exemptions, and remedies; and providing an applicability date.....Page 1304
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617	165		Goodover	An act generally revising the law regarding debtor group life, credit life, and credit disability insurance policies; increasing the credit transaction duration period for credit life and disability policies exempt from regulation; amending sections 33-20-1105 and 33-21-102, MCA; and providing an applicability date.....Page 1307
618	319		Jacobson	An act providing for the appointment of a surrogate parent for a handicapped child to represent the child in the decisionmaking process related to the child's education; prescribing the responsibilities of a surrogate parent; amending sections 20-7-401 through 20-7-403 and 20-7-414, MCA.....Page 1309

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620	416		Thayer	An act revising laws regulating the deposit and investment of local government funds; broadening the range of authorized United States securities that may be purchased; clarifying provisions related to repurchase agreements; raising from 50 to 100 percent the proportion of collateralization that may be required; placing an asset requirement on institutions making investments; and amending sections 7-6-202, 7-6-207, and 7-6-213, MCA.....Page 1317
621		279	Kitselman	An act providing that funds of a rural improvement district not needed to service the debts of a district may be transferred to the district's maintenance fund; providing that after the debts of a rural improvement district have been paid, remaining district money may be transferred to the district's maintenance fund; amending section 7-12-2182, MCA; and providing an effective date.....Page 1319
622		582	Wallin	An act to change the qualifications for the office of County Surveyor; amending section 7-4-2801, MCA.....Page 1320
623		652	Switzer	An act to allow the deduction of certain costs from the net proceeds tax on mines applicable to nonmetallic mines and mining claims; amending sections 15-23-502 and 15-23-503, MCA; and providing an applicability date.....Page 1320
624		770	Ream	An act to control the importation for introduction and the transplantation or introduction of wildlife; amending section 87-3-105, MCA.....Page 1323
625		779	Connelly	An act creating a special law enforcement assistance account; authorizing the account to receive funds and properties forfeited under federal law; and appropriating the proceeds of the account for specified law enforcement purposes.....Page 1327
626		807	Hannah	An act providing for the protection of certain handicapped, injured, or otherwise seriously ill children by requiring that they be given medical treatment; amending section 41-3-102, MCA.....Page 1327
627		844	Patterson	An act to exempt from taxation certain equipment used to farm sugar beets only if such equipment has been unused for a certain period; amending section 15-6-207, MCA; and providing an applicability date.....Page 1330
628	26		Towe	An act permitting the Board of Land Commissioners to exchange state lands located within Indian reservations for lands owned by tribal governments; permitting the board to sell state lands located within Indian reservations to tribal governments; amending sections 77-2-201, 77-2-306, and 77-2-307, MCA.....Page 1331
629	79		Christiaens	An act providing for the licensure and regulation of occupational therapists and occupational therapy assistants; creating a Board of Occupational Therapy Practice; providing for the authority of the board.....Page 1332
630	109		Fuller	An act requiring lenders to notify museums of changes of address and transfers of ownership of loaned property; establishing a procedure for lenders to preserve their interests in property loaned to a museum; and vesting title to unclaimed property in the museum that holds it; and providing an applicability date.....Page 1339
631	361		Haffey	An act providing a cost-of-living increase in service and disability retirement allowances and survivorship allowances for certain members of the Public Employees' Retirement System and their beneficiaries; and providing an effective date.....Page 1344
632		490	Bardanouve	An act to delete the requirement that the institutional industries program revert all unobligated funds over a $50,000 ending-fund balance to the state general fund at the end of each biennium; amending section 53-1-302, MCA.....Page 1344
633		676	Donaldson	An act to amend the Montana Hazardous Waste Act to allow the Department of Health and Environmental Sciences to adopt rules setting requirements for underground storage tanks containing petroleum or other hazardous substances; requiring tank owners or operators to report leaks; amending sections 75-10-403, 75-10-405, 75-10-409, and 75-10-532, MCA; and providing an immediate effective date.....Page 1345

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634		815	Hayne	An act to provide funds for an agriculture in Montana schools program through an income tax return checkoff; and providing a termination date. ....Page 1349
635	325		Van Valkenburg	An act establishing a permissive statewide emergency telephone system; providing for a state plan; providing for telephone industry coordination; providing for coin telephone conversion; providing for funding of the system by levying a telephone fee; amending section 35-18-503, MCA; and providing effective dates....Page 1350
636		607	Quilici	An act to allow a production incentive tax credit to the coal severance tax on incremental production of coal meeting certain requirements; limiting the period during which production may qualify for the credit; amending sections 15-35-102 and 15-35-103, MCA; and providing an immediate effective date and an applicability date....Page 1357
637	77		Jacobson	An act changing to July 1 the deadline for submitting a proposal for acquisition of park property purchased with income from the coal tax parks and cultural trust fund; amending section 23-1-108, MCA. ....Page 1363
638	178		Kolstad	An act assigning authority to the Legislative Council to set and collect fees for purchase of the proceedings of the Legislature; establishing broader authority to determine what is included in the proceedings of the Legislature; and amending sections 5-11-211 through 5-11-213, MCA....Page 1364
639	204		Mazurek	An act including county park and recreational complex funding with funding for certain county cultural, social, and recreational facilities; providing that the 2-mill property tax funding for such parks and facilities may be imposed or rejected if initiated by petition and approved by the electorate; providing an exception for currently levied taxes; amending sections 7-16-2102 and 7-16-2103, MCA....Page 1365
640	349		Mazurek	An act clarifying and consolidating the bonding authority of the Montana Economic Development Board; authorizing the board to guarantee certain bonds and loans; establishing a loan loss reserve fund; allowing the board to set terms to finance certain projects; amending sections 17-5-1505, 17-5-1506, 17-6-308, 17-6-311, and 17-6-315, MCA; and providing an immediate effective date. ....Page 1366
641	452		Eck	An act creating the "Employee and Community Hazardous Chemical Information Act"; requiring employers to provide employees with information concerning hazardous chemicals in the workplace; requiring County Clerk and Recorders to maintain and provide public access to this information; providing for inspections by local fire chiefs; specifying rights of employees; providing trade secret confidentiality in certain circumstances; and providing a delayed effective date. ....Page 1369
642	462		Gage	An act revising allowable deductions in determining oil and gas net proceeds for property tax purposes; establishing starting points for the amortization of drilling costs and certain capital expenditures; amending sections 15-23-603 and 15-23-604, MCA; and providing an immediate effective date and an applicability date....Page 1378
643		3	Marks	An act allowing an increase in the charge to classified forest landowners for fire protection up to $14; limiting assessments to no more than one-third of the total appropriated by the Legislature for forest fire protection; amending sections 76-13-201 and 76-13-207, MCA; and providing an effective date....Page 1379
644		44	Waldron	An act authorizing the courts to require payment of a victim's counseling costs by a defendant who is financially able and who is convicted of the offense of incest or sexual intercourse without consent; amending sections 45-5-503 and 45-5-507, MCA; and providing an applicability date. ....Page 1381
645		108	Winslow	An act to increase the amount paid to a county by the United States or the State of Montana to hold a prisoner committed to a county jail by the United States or the Montana Highway Patrol; amending sections 7-32-2206 and 7-32-2209, MCA....Page 1382
646		114	Miles	An act to generally revise and clarify the laws relating to swimming pools and bathing places; clarifying that the Department of Health and Environmental Sciences may set safety standards for public swimming pools and bathing places; amending sections 50-53-101 through 50-53-103 and 50-53-108, MCA; and providing an immediate effective date....Page 1383

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647		127	Keyser	An act to generally revise the law concerning private security patrolmen and investigators; providing coverage for security alarm systems; removing the exemption for charitable institutions; deleting residency requirements; clarifying requirements for qualifying agents and resident managers; removing exemptions from registration as an armed guard or investigator; providing qualifications for unarmed private investigators; amending sections 37-60-101, 37-60-105, 37-60-202, and 37-60-302 through 37-60-306, MCA. ....Page 1385
648		146	Lory	An act to generally revise the laws relating to the Department of Administration's powers and duties concerning the supervision of construction of state buildings; authorizing the Department to delegate certain of those powers and duties to other state agencies; removing the requirement for departmental concurrence on certain projects; removing the limitation on procurement of construction projects by the Department of Fish, Wildlife, and Parks; amending section 18-2-103, MCA; repealing section 87-1-211, MCA; and providing an immediate effective date. ....Page 1392
649		344	Manuel	An act providing training for family practice resident physicians; limiting use of funds; appropriating funds; and providing an effective date....Page 1394
650		394	D. Brown	An act to entitle public employees in certain categories to per diem compensation for their service as members of quasi-judicial and State Education and Historical Society Boards; to increase the per diem compensation for members of State Education and Historical Society Boards from $25 a day to $50 a day; and to provide per diem compensation for members of the State Library Commission; amending sections 2-15-124, 2-15-1009, 2-15-1512, 2-15-1706, 19-3-302, 20-2-113, 22-1-101, and 22-3-105, MCA; and providing an effective date. ....Page 1395
651		444	J. Brown	An act providing for child support orders to state that if the person obligated under the order to pay support is delinquent in the payments, his income will be subject to withholding procedures. ....Page 1398
652		497	Koehnke	An act to provide that the approval agents are not required to approve a tuition application if the resident district provides transportation unless certain conditions exist; amending section 20-5-311, MCA; and providing an immediate effective date....Page 1399
653		554	Connelly	An act requiring contracts for projects financed under the Montana Economic Development Bond Act, the Montana In-state Investment Act, and the industrial development projects Law to contain a provision giving preference to the employment of Montana residents; amending sections 17-5-1526 and 17-5-1527, MCA. ....Page 1400
654		585	Gould	An act to revise the sentence review procedure; providing that any interested person may participate in review proceedings; creating a presumption in favor of the sentence imposed; amending section 46-18-904, MCA....Page 1403
655		608	M. Williams	An act to require mandatory approval of a tuition application when an elementary or high school student is transferred from the student's resident district as the result of a court order; amending sections 20-5-301 and 20-5-311, MCA....Page 1404
656		616	J. Brown	An act authorizing creation of business improvement districts; providing procedures for creation; providing for organization, operation, appointment, terms, and removal of a board of trustees; establishing powers of the board of trustees; providing for a budget and an annual work plan; providing for a manner of assessing costs; providing for a tax levy upon the district; providing for the duration of the district; prohibiting decrease in services; and providing an immediate effective date....Page 1407
657		625	Cohen	An act to provide additional alternatives for the assessment of costs for street maintenance districts; revising the method of measuring protest votes; amending sections 7-12-4407, 7-12-4421, 7-12-4422, 7-12-4425, and 7-12-4428, MCA; repealing sections 7-12-4423 and 7-12-4424, MCA; and providing an effective date....Page 1412
658		632	Eudaily	An act providing a cost-of-living increase in service and disability retirement allowances and survivorship allowances for certain members of the Teachers' Retirement System and their beneficiaries; providing a minimum monthly benefit allowance for certain members of the System and their beneficiaries; increasing the employer's contribution to the system; amending section 19-4-605, MCA; and providing an effective date. ....Page 1413

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660		696	Kitselman	An act relating to the cost indicator used in the valuation of centrally assessed properties; directing the amendment of rule 42.22.112, Administrative Rules of Montana. ....Page 1419
661		707	Jenkins	An act to revise the law regulating plumbing; clarifying the definition of "plumbing system"; revising and providing exceptions to the plumbing practice laws; removing the requirement for Board of Plumbers approval for unlicensed personnel when a licensee is unavailable; providing for reciprocal licensing of plumbers licensed in other states; revising the license discipline law; providing that a violation of provisions of Title 37, chapter 69, is a misdemeanor; amending sections 37-69-101, 37-69-102, 37-69-301, and 37-69-324, MCA; and repealing section 37-69-321, MCA. ....Page 1420
662		737	Bergene	An act permitting a County Attorney or County Welfare Department to convene adult protective service teams to assist older persons who are victims of abuse, neglect, or exploitation; permitting disclosure of reports filed under the Montana Elder Abuse Prevention Act to such teams; amending section 53-5-513, MCA. ....Page 1423
663		869	Menahan	An act extending to all lower income property owners the property tax reductions for widows and widowers at least 62 years of age, widows and widowers with dependent children, and recipients of retirement or disability benefits; adjusting the income schedule for such property tax reductions; amending sections 15-6-134, 15-6-142, and 15-6-151, MCA; providing an immediate effective date and an applicability date. ....Page 1425
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666		891	Addy	An act to generally revise the laws pertaining to eminent domain; amending sections 70-30-110, 70-30-203, 70-30-207, and 70-30-322, MCA. ....Page 1455
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668	54		Towe	An act to make it a misdemeanor to purposely or knowingly abuse, neglect, or exploit certain persons 60 years of age or older; amending sections 53-5-503 and 53-5-525, MCA ....Page 1464
669		945	Pavlovich	An act to establish a state lottery and provide for its administration; amending section 23-5-202, MCA; providing effective dates; and providing that the proposed lottery law be submitted to the electors of the state of Montana. ....Page 1465

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671	13		Story	An act clarifying that the Montana Administrative Procedure Act does not apply to units of local government, school districts, or any other political subdivisions of the state; amending section 2-4-102, MCA; and providing an applicability date. ..... Page 1488
672	119		Eck	An act providing that any fee for child support enforcement services be paid by the person from whom the support is collected rather than by the applicant for the services; amending section 40-5-203, MCA. ..... Page 1490
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677		270	Marks	An act creating a Select Committee on Health Insurance for Retired Public Employees; defining the duties and powers of the committee; appropriating funds for the committee's use; and providing an immediate effective date. ..... Page 1500
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682	72		Hager	An act to exclude certain social security benefits, certain tier 1 railroad retirement benefits, workers' compensation benefits, and certain employer-paid health insurance premiums from adjusted gross income in computing state individual income tax liability by providing a base exclusion for married persons filing separately; amending section 15-30-111, MCA; and providing an immediate effective date and an applicability date. ..... Page 1517

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684	110		Mazurek	An act adopting the Uniform Arbitration Act and conforming other statutory provisions thereto; providing for applicability to certain agreements; amending sections 2-18-621, 27-1-412, 28-2-708, and 71-3-801, MCA; and repealing sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA. .....Page 1525
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689	268		Halligan	An act revising the criteria for detention of youths; providing that a detained youth must have allegedly committed an act which if committed by an adult would constitute a crime; amending section 41-5-305, MCA.....Page 1542
690	288		Eck	An act removing the requirement that the state markup on liquor manufactured, distilled, rectified, bottled, or processed in Montana be 10 percent less than the markup on the products of out-of-state manufacturers, distillers, rectifiers, and processors; providing a lower liquor excise and license tax for companies that manufacture, distill, rectify, bottle, or process, and sell not more than 200,000 proof gallons of liquor annually; amending sections 16-1-401 and 16-1-404, MCA; repealing section 16-2-202, MCA; and providing an effective date. .....Page 1543
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695	390		Mazurek	An act defining "new production" of petroleum, oil, and natural gas; providing for a uniform rate of taxation on new production; allowing certain deductions in determining the net proceeds of new production; providing for consideration of new production taxes in county bonding limitations; providing for disposition of taxes in lieu of net proceeds taxes; providing for quarterly payment of new production taxes; revising the definition of "taxable valuation" as it applies to the classification of counties; amending sections 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-16-102, 15-23-601 through 15-23-603, 15-23-605, 15-23-607, 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, and 20-10-144, MCA; and providing effective dates. ....Page 1552
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698	427		Manning	An act providing a method for funding the supplemental allowance granted to certain members of the Montana Firefighters' Unified Retirement System if insufficient money is available; amending section 19-13-1006, MCA; and providing an effective date. ....Page 1572
699	431		Eck	An act revising the greenbelt appraisal definition of agricultural land for real property taxation purposes; allowing for the reduced value of agricultural improvements situated on agricultural land by classifying them separately and taxing them at 80 percent of the taxable percentage applicable to class four property; amending section 15-7-202, MCA; and providing an immediate effective date and an applicability date. ....Page 1573
700	449		Regan	An act defining "domestic abuse" and providing that commission of domestic abuse is a criminal offense; presuming arrest in cases of domestic abuse; prohibiting a peace officer from accepting bail on behalf of a justice of the peace when a person is arrested for domestic abuse; amending sections 46-6-105, 46-6-401, and 46-9-302, MCA; and providing an effective date. ....Page 1575
701		812	Bradley	An act creating a Montana Science and Technology Development Board to foster economic growth; appropriating money to the board from the alternative energy and energy conservation research development and demonstration account; and providing an immediate effective date and an applicability date. ....Page 1578
702		870	D. Brown	An act increasing light vehicle licensing fees; providing that a portion of the increased fee be distributed to the local government block grant program to be used for block grants; amending sections 61-3-509, 61-3-533, and 61-3-536, MCA; and providing a delayed effective date, an applicability date, and a termination date. ....Page 1582
703		12	Bardanouve	An act to clarify the law relating to appropriations by defining and establishing the requisites for valid continuing statutory appropriations; amending sections 2-9-202, 2-17-105, 2-18-812, 10-3-203, 10-3-312, 10-3-314, 13-37-304, 15-31-702, 15-36-112, 15-70-101, 16-1-404, 16-1-410, 16-1-411, 17-3-212, 17-5-404, 17-5-804, 19-8-504, 19-9-702, 19-9-1007, 19-10-205, 19-10-305, 19-10-506, 19-11-512, 19-11-513, 19-11-606, 19-12-301, 19-13-604, 20-6-406, 20-8-111, 53-24-206, 80-2-103, and 80-2-228, MCA; and providing an immediate effective date. ....Page 1584
704		45	Waldron	An act increasing the cigarette excise tax to 24 cents per package; directing the disposition of the additional cigarette tax revenue; amending sections 16-11-111, 16-11-119, and 17-5-408, MCA; and providing a termination date and an effective date. ....Page 1603

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
705		168	Donaldson	An act to require the Department of Revenue to use a method of valuation based on capitalization of net income for valuing agricultural lands after January 1, 1986; amending section 15-7-201, MCA; and providing an applicability date and a delayed effective date. ....Page 1604
706		430	Bradley	An act to establish a voluntary statewide genetics program; to fund the program by a charge on health insurers of 45 cents for each Montana resident insured, with a termination date for such funding source; and to appropriate money therefor. ....Page 1606
707		550	J. Brown	An act to allow state employees to pool a portion of their compensated sick leave in a fund and to draw upon the fund if absence due to extensive illness or an accident exhausts their sick leave; creating a State Employee Sick Leave Advisory Council; amending section 2-18-618, MCA; and providing a termination date. ....Page 1607
708		633	Lory	An act to revise the laws relating to sanitation in subdivisions by requiring deposit of subdivision fees in the state general fund and requiring that funding for subdivision review be allocated from the state general fund; providing an appropriation; amending section 76-4-105, MCA; and providing an effective date. ....Page 1609
709		727	Hansen	An act to expand the rulemaking authority of local boards of health to ensure maintenance of sewer systems not controlled by the department; and to increase penalties; amending sections 50-2-116 and 50-2-124, MCA. ....Page 1610
710		754	Fritz	An act providing an allowance adjustment for members of the Municipal Police Officers' Retirement System retired on or after July 1, 1975, but before July 1, 1985, or their beneficiaries; providing funding for the adjustment; and providing an effective date. ....Page 1612
711		766	Ream	An act authorizing the Department of Health and Environmental Sciences to take remedial action to prevent or alleviate release of hazardous or deleterious substances into the environment; establishing a special fund for remedial action; providing for funding and appropriation of the special fund; and providing effective dates. ....Page 1613
712		775	Harp	An act clarifying the distribution procedure for forest reserve money; providing that distribution to the counties need not be made until the State Treasurer receives full payment of federal forest reserve funds and requiring payment of interest thereon; amending sections 17-3-211 and 17-3-212, MCA; and providing an effective date. ....Page 1617
713		798	Miles	An act to authorize the Department of Social and Rehabilitation Services to operate community programs for physically disabled persons; to authorize the department to license community homes for the physically disabled; to provide for standards for programs, administration, health, and safety for such services and community homes; and amending section 50-5-101, MCA. ....Page 1618
714		900	Hart	An act to provide that a peace officer with a lapse in employment as a peace officer exceeding 3 but less than 5 years may fulfill his basic peace officer training requirements by passing an equivalency test; amending section 7-32-303, MCA; and providing an immediate effective date. ....Page 1624
715		919	Bardanouve	An act to reallocate a portion of coal severance tax revenues to the state general fund, alternative energy program, and the highway program; amending sections 15-35-108 and 90-6-205, MCA; and providing an immediate effective date, an applicability date, and a termination date. ....Page 1626
716		942	Winslow	An act to require biennial appropriations from the resource indemnity trust fund to implement certain hazardous waste laws; amending section 15-38-202, MCA; and providing an immediate effective date. ....Page 1628

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
717		947	Bardanouve	An act to appropriate money to the Department of Natural Resources and Conservation for loans and grants under the water development program and the renewable resource program; to approve loans from water development bond proceeds and appropriate funds for debt service; to approve loans from renewable resource development bond proceeds and appropriate funds for debt service; to reauthorize loans approved by the 1983 Legislature; to approve the issuance of State of Montana coal severance tax bonds to finance the rehabilitation and repair of the state Middle Creek Dam project and provide funds for loans to political subdivisions and local governments for certain approved water development projects; to authorize use of interest earnings on proceeds of water development bonds to finance grants approved in this act; to reauthorize State of Montana coal severance tax bonds for certain projects approved by the 1983 Legislature; to appropriate coal severance tax income for debt service; to authorize the creation of a state debt; to reauthorize loans for certain projects approved by the 1983 Legislature for which State of Montana coal severance tax bonds have been sold; to reallocate certain resource indemnity trust account interest income for water development program grants during the biennium ending June 30, 1987; to place certain conditions upon grants and loans; amending section 90-2-107, MCA; and providing an immediate effective date.....Page 1629
718		956	Marks	An act appropriating money from the junk vehicle state special revenue fund to the general fund; amending section 75-10-532, MCA; and providing an effective date and a partial termination date....Page 1645
719	116		Aklestad	An act revising the pay structure for prosecuting attorneys; adjusting the salary of part-time County Attorneys; requiring the state to pay one-half of the salary of no more than two authorized deputy county attorneys; providing longevity pay for deputy county attorneys; providing funding by imposing a charge on persons convicted of criminal offenses or who forfeit bond or bail; amending sections 7-4-2502, 7-4-2503, and 7-4-2505, MCA; and providing an effective date. .....Page 1645
720		236	Pavlovich	An act providing for licensing and placement of electronic video draw poker machines; providing for distribution and appropriation of revenue; providing a penalty provision; and providing effective dates and a termination date.....Page 1649
721		374	Waldron	An act raising wine tax revenue allocated to the Department of Institutions for alcoholism prevention and treatment programs and beer tax revenue allocated to the general fund; amending sections 16-1-408 and 16-1-411, MCA; and providing an effective date.....Page 1655
722		410	Harp	An act to reduce the taxable rate applicable to certain class eleven property; amending section 15-6-141, MCA; and providing an applicability date. .....Page 1656
723		567	Schultz	An act requiring life and disability insurance companies to send written cancellation notices before canceling policies for nonpayment of premiums.....Page 1657
724		636	Abrams	An act to reduce the tax rate on petroleum produced by tertiary recovery methods from 5 percent to 2.5 percent; requiring amortization over 10 years of the costs of necessary chemical supplies used in approved tertiary recovery projects; amending sections 15-23-603 and 15-36-101, MCA; and providing an effective date.....Page 1659
725		681	J. Brown	An act to allow release of general information pertaining to a patient's condition to a law enforcement officer or to the news media by a health care facility; amending section 50-16-311, MCA.....Page 1662
726		704	Marks	An act allowing the exclusion of the taxable value of property under a protest proceeding from the taxable valuation of a county, municipality, and school district for the purpose of setting property tax levies if the taxable value of such property under protest exceeds 5 percent of the taxing jurisdiction's taxable valuation; providing that payment to the county, municipality, and school district from the protest fund on such property must be used to lower subsequent tax levies; requesting the revenue oversight committee to consider the advisability of creating a statewide protest fund; amending sections 7-6-2321, 7-6-4232, 15-10-202, and 20-9-142, MCA; and providing an effective date.....Page 1664

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727		717	Waldron	An act to amend the child support and custody statutes; to require the submission to the court of a plan implementing any custody award; to require the court to state the factors and reasons it considered in making a custody award and in not ordering child support to be paid; authorizing the court to require consultation with professionals in formulating or implementing a custody plan or order; amending sections 40-4-204, 40-4-223, and 40-4-224, MCA. ....Page 1667
728		739	Iverson	An act transferring the administration of the Board of Water Well Contractors from the Department of Commerce to the Department of Natural Resources and Conservation; redefining "water well contractor" and providing a definition of "water well driller"; prescribing additional duties and powers of the board; requiring the adoption of water well construction standards; requiring a license for water well drillers; providing an appropriation; amending sections 37-43-102, 37-43-202, and 37-43-302 through 37-43-306, MCA; repealing section 37-43-103, MCA; and providing an effective date....Page 1669
729		826	Ellerd	An act allowing a defined resort community to establish a resort tax after a vote of its electors; establishing categories of goods and services subject to the tax; providing resort community property tax relief; and providing an immediate effective date. ....Page 1674
730		909	Manuel	An act providing for the administration and awarding of grants to state governmental units for energy conservation measures; amending sections 90-4-102, 90-4-104, and 90-4-106, MCA; and providing an immediate effective date. ....Page 1677
731		924	Bardanouve	An act creating retail alcoholic beverages licenses in excess of state quota limitations to be issued to tribal alcoholic beverages licensees doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations; amending sections 16-4-105, 16-4-201, and 16-4-204, MCA; and providing an immediate effective date and applicability dates. ....Page 1680
732		938	Thoft	An act providing for administration of the cultural and aesthetic grants program by the Montana Arts Council; providing for grant conditions and expenditures; amending sections 22-2-303 and 22-2-306, MCA; appropriating money for certain projects; and providing an effective date. ....Page 1687
733		949	Marks	An act appropriating Coal Board money to the foundation program; amending section 90-6-205, MCA; providing an immediate effective date; and providing a termination date. ....Page 1692
734		513	Ellison	An act establishing a state veterans' cemetery; requiring the Department of Military Affairs to adopt rules on criteria for establishing burial eligibility; and providing an appropriation....Page 1693
735	467		Galt	An act to ratify the compact entered into by the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; providing an immediate effective date....Page 1693
736		701	Fritz	An act allowing the Department of Revenue, after consultation with the Revenue Oversight Committee and approval by the Legislature, to accept in-kind payments of certain inheritance and estate taxes with objects, sites, or items of unique historical and cultural significance or with interests in real property having conservation, recreation, or wildlife preservation value; approving acceptance by the department of in-kind payment of the Daly mansion; and providing an immediate effective date and a retroactive applicability date....Page 1716
737		667	Donaldson	An act permitting a youth alleged to be a delinquent youth to be detained at Mountain View School; requiring the county of the youth's residence to pay certain expenses resulting from the detention; appropriating funds to the Department of Institutions; amending sections 41-5-207, 41-5-306, and 53-30-202, MCA; providing a termination date; and providing effective dates....Page 1719
738		211	Eudaily	An act to increase the maximum general fund budget schedules for elementary schools and high schools by 4 percent for school fiscal year 1985-86 and by 4 percent for school fiscal year 1986-87; amending sections 20-9-316 through 20-9-319, MCA; and providing an immediate effective date....Page 1721

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739		198	Ramirez	An act to allow zero percent increase in the statewide taxable value of property in class three, class four, and class twelve due to the effects of reappraisal; amending sections 15-6-133, 15-6-134, and 15-6-142, MCA.....Page 1725
740		375	Bardanouve	An act establishing state employee compensation plans and benefits levels; providing pay schedules for fiscal years 1986 and 1987; appropriating funds therefor; amending sections 2-18-301, 2-18-303, 2-18-311 through 2-18-315, and 2-18-703, MCA; and providing an immediate effective date.....Page 1728
741		901	D. Brown	An act exempting a public contractor who constructs or works on a federal research facility from the additional license tax imposed on public contractors; amending section 15-50-205, MCA; and providing an immediate effective date.....Page 1737
742		954	Thomas	An act providing for the detachment of territory from one county and its annexation to another county; providing for the approval of the electors of both counties as required by the Montana constitution; amending sections 7-2-2201, 7-2-2202, 7-2-2205 through 7-2-2207, 7-2-2215 through 7-2-2219, 7-2-2221 through 7-2-2224, and 7-2-2243, MCA; and repealing sections 7-2-2203 and 7-2-2210, MCA...Page 1738
743		240	Ramirez	An act to revise Montana property tax classification law to comply with federal law granting certain types of property special consideration and with provisions of the Montana Constitution; requiring the Department of Revenue to conduct audits of assessments on commercial personal property; requiring the Department of Revenue to annually determine the taxable percentage rate applicable to class thirteen property; defining the term "commercial" as it applies to property subject to taxation; amending sections 15-1-101, 15-6-134, 15-6-13E, 15-6-141, 15-8-104, 15-8-111, and 15-23-202, MCA; and providing effective dates.....Page 1745
744		295	Harrington	An act to generally revise the new motor vehicle warranty remedy law; increasing minimum warranty periods; providing for remedies, disclosures, and penalties; creating an arbitration procedure; amending sections 61-4-501 through 61-4-503 and 61-4-505 through 61-4-507, MCA; and providing an applicability provision and an immediate effective date.....Page 1753

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HB	Sponsor	Title
1	Bardanouve	An act appropriating money for the operation of the Forty-Ninth Legislature and providing an immediate effective date.....Page 1763
203	Bardanouve	An act appropriating money to various state agencies for the fiscal year ending June 30, 1985, which increases would usually be made by budget amendment; providing for some appropriations to continue into the fiscal year ending June 30, 1986; and providing an immediate effective date.....Page 1763
206	Bardanouve	An act appropriating money to various state agencies for the fiscal year ending June 30, 1985; providing for other matters relating to the appropriations; and providing an immediate effective date.....Page 1767
212	Eudaily	An act to appropriate funds to the Superintendent of Public Instruction for public school support other than for special education; to appropriate funds to School District No. 10, Deer Lodge County, and High School District No. 10, Deer Lodge County, from the State Equalization Aid Account to compensate for a significant decline in enrollment and taxable valuation over the previous 5 years.....Page 1770
320	Waldron	An act to appropriate $20,000 for the 1987 biennium to study family unification facilities at Montana State Prison and bring proposed rules and implementation costs before the 50th Legislature; and providing an effective date.....Page 1771
381	Ream	An act to appropriate $40,000 from the State Equalization Aid Account to pay the De Smet School District for state equalization aid which the district did not receive for the school fiscal years 1979 through 1981; and providing an immediate effective date.....Page 1771

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500	Bardanouve	The general appropriations act of 1985 for the appropriation of money to various state agencies for the biennium ending June 30, 1987; and providing an effective date. ....Page 1772
565	Fritz	An act appropriating money to refurbish historical highway markers and to add historical highway markers; and providing an immediate effective date. ....Page 1802
684	Waldron	An act appropriating money to the Department of Administration to satisfy the claim of Vision Quest in the matter of James Romero, No. 929-J, First Judicial District; and providing an immediate effective date. ....Page 1803
861	Bardanouve	An act authorizing the issuance and sale of long-range building program general obligation bonds and appropriating the proceeds thereof for capital projects for the biennium ending June 30, 1987; providing for an agreement between the Board of Examiners and the Department of Fish, Wildlife, and Parks and the Board of Regents; providing for other matters relating to the appropriations; and providing an immediate effective date. ....Page 1803
922	Harper	An act appropriating money to the Department of Natural Resources and Conservation for grants for designated projects; prioritizing grants and amounts; establishing conditions for grants. ....Page 1806
928	Thoft	An act to appropriate money for capital projects for the biennium ending June 30, 1987; to provide for other matters relating to the appropriations; to provide an exception to the prohibition on the use of inmate labor for the construction of certain buildings by providing that such labor may be used in constructing a warehouse at the Montana State Prison; amending section 7, House Bill No. 833, L. 1983; and providing an immediate effective date. ....Page 1811
932	Spaeth	An act to appropriate funds from the Department of Fish, Wildlife, and Parks license revenue account to the Department of Natural Resources and Conservation for repayment of the loan for rehabilitation of the Cooney Dam. ....Page 1819
935	Winslow	An act appropriating money for residential alcohol abuse treatment for indigent youth. ....Page 1820
952	Iverson	An act to appropriate funds for implementation of the recommendations of the Select Committee on Water Marketing to further the development of a comprehensive water policy for Montana. ....Page 1820
961	Bardanouve	An act appropriating funds to the Montana Historical Society to purchase the Charles M. Russell collection of letters, paintings, and sketches belonging to the Elks Lodge of Great Falls, Montana; and providing an immediate effective date. ....Page 1822

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1	Mazurek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing and encouraging participation in and support of Montana Special Olympics Week. ....Page 1827
3	Van Valkenburg	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to adopt Joint Rules to govern their proceedings. ....Page 1827
4	Lane	A Joint Resolution of the Senate and the House of Representatives of the State of Montana honoring Larry Peabody for winning the 1984 World Bareback Championship. ....Page 1850
5	Mazurek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana commemorating the 75th anniversary of Carroll College. ....Page 1851
6	Blaylock	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to name the new Department of Natural Resources and Conservation Building the "Lee Metcalf Building" in recognition of the many contributions Lee Metcalf made to the people of the state of Montana through his work and concern for environmental protection, conservation, and preservation of natural resources and wildlife. ....Page 1852
8	Story	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to enact legislation revising the federal condemnation procedures to afford greater consideration to the interests of the landowner. ....Page 1854

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12	Severson	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to send delegates to the Western States Legislative Forestry Task Force..Page 1856
14	B. Williams	A Joint Resolution of the Senate and the House of Representatives of the State of Montana assigning the Revenue Oversight Committee to review procedures for the payment of property taxes and for the sale of real and personal property for delinquent taxes. ....Page 1856
15	Christiaens	A Joint Resolution of the Senate and the House of Representatives of the State of Montana calling for the President of the United States to immediately submit to Congress a balanced federal budget and for Congress to adopt a balanced budget for the ensuing fiscal year....Page 1857
16	Yellowtail	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the governments of Montana and Wyoming to resolve their differences on the Powder River through negotiation of a basin management plan....Page 1858
19	Manning	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging repeal of those sections of the federal law which limit the political activity of federal employees....Page 1860
20	Van Valkenburg	A Joint Resolution of the Senate and the House of Representatives of the State of Montana in memory of Allen L. Kimery....Page 1860
21	B. Brown	A Joint Resolution of the Senate and the House of Representatives of the State of Montana supporting Montana's participation in the Close Up Program in Washington, D.C., in April 1985....Page 1861
22	Towe	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress to reauthorize the Indian Health Care Improvement Act....Page 1862
23	Haffey	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress to pass legislation calling for the President to send a special envoy to Ireland to help effect a peaceful resolution of the Irish conflict....Page 1863
24	Stephens	A Joint Resolution of the Senate and the House of Representatives of the State of Montana pledging the continued support of the Legislature for income tax indexing. ....Page 1864
25	Towe	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to honor Senator Dave Manning upon his retirement after 52 years of service to Montana by remembering his distinguished career and by naming the Highway Building the "Dave Manning Highway Building"....Page 1867
27	Stimatz	A Joint Resolution of the Senate and the House of Representatives of the State of Montana endorsing the Designated Driver Program to reduce the incidence of driving while under the influence of intoxicants....Page 1869
29	Weeding	A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing and supporting the efforts of Senator Dave Manning on behalf of off-stream storage hydropower development in the Yellowstone River Basin and directing the Department of Natural Resources and Conservation to collect and centralize the information supporting the gravity diversion concept, document future water needs to implement this concept, and pursue project planning and financing discussions with the federal government....Page 1870
30	Christiaens	A Joint Resolution of the Senate and the House of Representatives of the State of Montana honoring the Rural Electrification Administration on its 50th anniversary. ....Page 1871
31	Christiaens	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of Montana's Lien Laws....Page 1872
32	B. Brown	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of educational television in Montana; requiring a report of the findings of the study to the 50th Legislature....Page 1873
33	Mohar	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the appropriate role of the state in regulating and licensing contractors and promulgating and enforcing building codes; requiring a report of the findings of the study to the 50th Legislature....Page 1874
36	E. Smith	A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing support for limiting application of the Cargo Preference Act of 1954 by the United States Congress....Page 1875
37	Hager	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study to evaluate the function of licensing boards for health-related professions and occupations and to make recommendations on reducing the number of such boards....Page 1876

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39	Haffey	A Joint Resolution of the Senate and the House of Representatives of the State of Montana in memory of Timothy J. Sullivan. ....Page 1877
41	Mazurek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress to adopt legislation authorizing the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation to enter water agreements for the delivery, use, or transfer of water within or outside the reservation. ....Page 1878
42	Fuller	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study on local government infrastructure. ....Page 1880
44	Christiaens	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress to allow state assumption of the 8-cent federal cigarette excise tax scheduled to expire on October 1, 1985. ....Page 1881

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1	Vincent	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to congratulate and honor the fighting Bobcats of Montana State University, this year's National Champions of Division I-AA football. ....Page 1882
2	Spaeth	A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing agencies to adopt policies having the force and effect of law as administrative rules. ....Page 1884
3	Eudaily	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to amend Joint Rule 11-3, relating to statements of intent, to make the joint rules compatible with statutory amendments made by House Bill No. 9, which provides that a statement of intent need not accompany a delegation of authority extending previously enacted rulemaking authority to newly enacted or amended agency duties. ....Page 1885
5	Asay	A Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress and the Army Corps of Engineers to complete a program of bank protection, stabilization, and maintenance along the Missouri, Yellowstone, and Bighorn Rivers in Montana. ....Page 1886
6	J. Brown	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the President and Congress of the United States to continue their efforts to halt the persecution and severe repression of the Baha'is in Iran. ....Page 1887
7	Menahan	A Joint Resolution of the Senate and the House of Representatives of the State of Montana concerning the classification, pay, and other conditions of employment of legislative employees. ....Page 1888
8	Kitselman	A Joint Resolution of the Senate and the House of Representatives of the State of Montana honoring the Centennial of the Montana National Guard and urging public recognition of the splendid combat record and accomplishments of the Montana National Guard in serving the people of the State of Montana. ....Page 1891
10	Bachini	A Joint Resolution of the Senate and the House of Representatives of the State of Montana authorizing the permanent display of a bronze tablet on the Sam W. Mitchell Building acknowledging the 1946 gift of the building site from the sons and daughters of Montana pioneers. ....Page 1892
15	Schye	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Montana Agricultural Experiment Station to develop a comprehensive research program in sustainable agriculture. ....Page 1893
17	Schultz	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging repeal of the provisions of the 1984 Tax Reform Act and Internal Revenue Service regulations requiring mileage and use records for business vehicles. ....Page 1894
18	Lory	A Joint Resolution of the Senate and the House of Representatives of the State of Montana consenting to certain construction projects at the University of Montana, including improvement of riverfront property. ....Page 1895
19	Waldron	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Department of Social and Rehabilitation Services to provide priority referral and placement for pregnant teenagers. ....Page 1896
20	Schultz	A Joint Resolution of the Senate and the House of Representatives of the State of Montana commemorating 50 years of the soil and water conservation movement in Montana. ....Page 1896

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21	Fritz	A Joint Resolution of the Senate and the House of Representatives of the State of Montana supporting comprehensive federal tax reform and simplification.....Page 1897
22	Raney	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study on alcohol regulation and youths.....Page 1898
23	Hansen	A Joint Resolution of the Senate and the House of Representatives of the State of Montana congratulating the Camp Fire organization on its 75th birthday.....Page 1899
25	Swift	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Montana Congressional Delegation submit to the 99th United States Congress legislation for allocating wilderness areas on federal lands in Montana.....Page 1900
26	Connelly	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the board of trustees of each school district in the state to appoint a nonvoting student member to the board to represent the student body of the school district.....Page 1901
28	Rapp-Svrcek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress to enact legislation that establishes a long-term food and fiber policy with price, production, and conservation goals that strengthen family farm agriculture.....Page 1902
32	Switzer	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that livestock grazing fees charged on the Charles M. Russell Wildlife Refuge be maintained at the current rate.....Page 1903
33	Bardanouve	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Capital Finance Advisory Council to study a variety of debt-related topics.....Page 1904
35	D. Brown	A Joint Resolution of the Senate and the House of Representatives of the State of Montana in support of the national effort to advance the development of magnetohydrodynamics technology to a commercially viable stage.....Page 1905
36	Grady	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of ways of alleviating damage caused by wild animals to agricultural crops, land, and fixtures thereon.....Page 1906
37	Hannah	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Supreme Court study the question of use in a criminal prosecution of out-of-court statements of an alleged victim of the offense of sexual abuse of children.....Page 1908
38	Bachini	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting continued funding for Amtrak.....Page 1909
40	Spaeth	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study to determine the fair market value for grazing fees on state school trust lands.....Page 1910
41	Wallin	A Joint Resolution of the Senate and the House of Representatives of the State of Montana adopting the province of Taiwan as a sister state.....Page 1911
43	Lory	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Legislative Finance Committee to study and report its findings on the use of vacancy savings in the budgeting process.....Page 1912
44	Winslow	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of juvenile detention facilities in Montana; requiring a report of the findings of the study to the 50th Legislature.....Page 1912
45	Connelly	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the laws relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings....Page 1913
48	Spaeth	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of judicial selection methods and compensation; requiring a report of the findings of the study to the 50th Legislature.....Page 1914
49	Quilici	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the methods by which an unemployed individual and his dependents may be provided with coverage for medical costs incurred during the wage earner's unemployment; requiring a report of the findings of the study to the 50th Legislature.....Page 1915
50	Thoft	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the issues related to the appropriate placement of the Law Enforcement Academy and the related costs.....Page 1917

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HJR	Sponsor	Title
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52	Harrington	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of state governance and financing of Montana's post-secondary vocational-technical centers. ..... Page 1919
54	Winslow	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of job training and placement programs to attempt to coordinate efforts to provide maximum benefit for unemployed Montanans. ..... Page 1920
55	Spaeth	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of government's immunity from suit and limits of liability for the state of Montana and its political subdivisions; requiring a report of the findings to the Legislature. ..... Page 1921
56	Rehberg	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the President of the United States to appoint a well-qualified Montanan to the United States Court of Appeals for the Ninth Circuit. ..... Page 1922
57	Holliday	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the problems facing the agricultural sector of the Montana economy. ..... Page 1923
58	Addy	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the statutory employment at will rule and the doctrines of wrongful discharge in violation of public policy and the implied covenant of good faith and fair dealing. ..... Page 1924

SENATE RESOLUTIONS

SR	Sponsor	Title
1	Van Valkenburg	A Resolution of the Senate of the State of Montana to adopt rules to govern its proceedings in addition to the Joint Rules. ..... Page 1925
2	Blaylock	A Resolution of the Senate of the State of Montana expressing its desire to move its chamber. ..... Page 1929
5	Blaylock	A Resolution of the Senate of the State of Montana indicating the desire of the Senate to retain the old Supreme Court chamber as a Senate hearing room. ..... Page 1929

HOUSE RESOLUTIONS

HR	Sponsor	Title
1	Ramirez	A Resolution of the House of Representatives of the State of Montana to adopt rules in addition to the Joint Rules to govern its proceedings. ..... Page 1930
2	Harp	A Resolution of the House of Representatives of the State of Montana to amend the House Rules following H3-4 by adding House Rule H3-5 to provide for a revenue subcommittee of the House Taxation Committee. ..... Page 1932
4	Menahan	A Resolution of the House of Representatives of the State of Montana requiring all House supplies to be stored under lock and key and all furniture belonging to the House to be labeled and not moved during the interim. ..... Page 1933

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SESSION LAWS

CHAPTER NO. 1

[HB 15]

AN ACT TO DENY UNEMPLOYMENT INSURANCE BENEFITS TO NONPROFESSIONAL SCHOOL EMPLOYEES BETWEEN ACADEMIC TERMS AND TO ALL SCHOOL EMPLOYEES DURING VACATIONS AND HOLIDAYS; TO PROVIDE RETROACTIVE PAYMENT OF CERTAIN BENEFITS; AND TO BRING THE MONTANA UNEMPLOYMENT INSURANCE LAW INTO CONFORMITY WITH FEDERAL LAW; AMENDING SECTION 39-51-2108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. *(1)* Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract *or reasonable assurance of a contract* to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

(2) Benefits based on services in any other capacity for an educational institution shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform such service for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

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(3) Benefits based on services described in subsections (1) and (2) of this section shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is reasonable assurance that such individual will perform such service in the period immediately following such vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) of this section to an individual who performed such services for an educational institution while in the employ of an educational service agency shall be denied as specified in subsections (1), (2), and (3) of this section. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institutions."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to all claims for benefits which became effective on or after October 28, 1984.

Approved January 17, 1985.

CHAPTER NO. 2

[HB 29]

AN ACT MOVING CONTRACTOR RESIDENCY DETERMINATION RESPONSIBILITY FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 18-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-106, MCA, is amended to read:

"18-1-106. Department of commerce to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence. (1) The department of *commerce* shall determine whether or not certain contractors, issued public contractor's licenses under the provisions of Title *37*, chapter *71*, are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident/nonresident status be made by the department. All requests must specify the name and address of the licensed public contractor for whom a determination of resident/nonresident status is required.

(2) If a determination is made that a licensed public contractor is not a resident but he thereafter qualifies as such, he may apply to the department of *commerce* for a redetermination of his residency. If, upon redetermination, the licensed public contractor is found to qualify as a resident, he shall be furnished a letter by the department attesting to such status.

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(3) The determination of the department of *commerce* that a licensed public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 25, 1985.

CHAPTER NO. 3

[HB 4]

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO GOVERNMENT, COURTS, ELECTIONS, AND CRIMES; AMENDING SECTIONS 1-11-204, 2-4-611, 2-7-517, 2-15-2007, 3-1-607, 3-2-104, 5-4-306, 5-7-203, 13-10-505, 13-27-312, 25-7-204, 25-7-206, 25-35-602, 27-27-101, 45-2-101, 45-9-101 THROUGH 45-9-103, 45-9-111, AND 45-9-116, MCA; AND REPEALING SECTIONS 2-7-101 AND 3-5-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-204, MCA, is amended to read:

"1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

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(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and *publish* a report *entitled* "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Section 2-4-611, MCA, is amended to read:

"2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct

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of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from *an agency* legal assistance program, *if any*, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing."

Section 3. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalty. When a governmental entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity."

Section 4. Section 2-15-2007, MCA, is amended to read:

"2-15-2007. Highway traffic safety program. The highway traffic safety program provided for in 61-2-102 is attached to the department of justice for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 5. Section 3-1-607, MCA, is amended to read:

"3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office — resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana *other than a judicial position*, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district judge.

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(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another judicial *position*."

Section 6. Section 3-2-104, MCA, is amended to read:

"**3-2-104. Salaries — expenses.** (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 7. Section 5-4-306, MCA, is amended to read:

"**5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature. *If the bill was approved by two-thirds of the members of each house present, the secretary of state shall poll the members of the legislature, and if two-thirds or more of the members of each house vote to override the veto, the bill shall become law.*

(3) The legislature may reconvene to reconsider any bill vetoed *by the governor when the legislature is not in session* by using the statutory procedure provided for convening in special session."

Section 8. Section 5-7-203, MCA, is amended to read:

"**5-7-203. Principal — name of lobbyist on docket.** *Every* principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal."

Section 9. Section 13-10-505, MCA, is amended to read:

"**13-10-505. Applicability.** The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except *for nominations to fill a vacancy* as provided in 13-25-205."

Section 10. Section 13-27-312, MCA, is amended to read:

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"13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note. If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary, appoint a five-member committee to recommend the statement of purpose and the statement of the implications of the measure. The committee shall consist of two persons recommended by the person filing the petition, two persons known to oppose the measure, and one representative of the attorney general's office, who is the chairman. The committee shall, within 14 days of appointment, meet and recommend by a vote of a majority of the committee:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(2) The attorney general may accept, reject, or modify the statements recommended by the committee. If the committee is unable to recommend one or both statements, the attorney general shall prepare the statements.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose prepared pursuant to subsection (1) or (2), unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 10 days after receipt

of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general."

Section 11. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge *or the jury commissioner* must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 12. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the *judge or the* jury commissioner, pursuant to an order of the court to be entered in the minutes, *shall,* in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make *or order further drawings* until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 13. Section 25-35-602, MCA, is amended to read:

"25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF ..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....
.....
Plaintiff
vs.
..... Complaint
..... Case No. .....
Defendant(s)
.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....
.....
.....

which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19....

.....
Plaintiff

.....
Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....
Justice of the peace
By:.....
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....
.....
on .....at ....
Reset for .....at ....
Reset for .....at ....
Reset for .....at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within *10* days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....
Dated this .... day of ....., 19....

.....
Justice of the peace
By:.....
Clerk, small claims division"

Section 14. Section 27-27-101, MCA, is amended to read:

"27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial *functions* when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person."

Section 15. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

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(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

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(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will

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be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,

detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets,

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(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

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(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

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(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than *$300* by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than *$300.*

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 16. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101*(19)*, shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

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(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 17. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101*(19)*, shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

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(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 18. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101*(19)*, with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 19. Section 45-9-111, MCA, is amended to read:

"45-9-111. Imitation dangerous drugs — definitions. As used in *45-9-111* through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation."

Section 20. Section 45-9-116, MCA, is amended to read:

"45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections *45-9-111* through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

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(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose."

Section 21. **Repealer.** Sections 2-7-101 and 3-5-212, MCA, are repealed.

Approved February 4, 1985.

CHAPTER NO. 4

[HB 7]

AN ACT GIVING THE LEGISLATIVE COUNCIL THE AUTHORITY TO DETERMINE DISPOSITION AND DISTRIBUTION METHODS AND SET THE SALE PRICE OR PRICES FOR THE PROCEEDINGS OF THE 1972 CONSTITUTIONAL CONVENTION; REPEALING SECTION 4, CHAPTER 373, LAWS OF 1977, AND SECTION 2 OF HOUSE BILL 897, LAWS OF 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Distribution of proceedings of 1972 constitutional convention.** The legislative council shall determine the methods of disposition and distribution of the copies of the proceedings of the 1972 constitutional convention. The council may set such sale price or prices for the copies of the proceedings as it determines appropriate. Proceeds from the sale of the proceedings must be deposited in the general fund.

Section 2. **Repealer.** Section 4, Chapter 373, Laws of 1977, and section 2 of House Bill 897, Laws of 1979, are repealed.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 4, 1985.

CHAPTER NO. 5

[HB 20]

AN ACT TO ELIMINATE THE REQUIREMENT THAT DELIVERY ZONE PERMITS BE OBTAINED; AMENDING SECTION 61-10-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-203, MCA, is amended to read:

"61-10-203. Alternative gross weight fees on truck trailer combinations. (1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in 61-10-201, for each motortruck or truck tractor, based upon the maximum combined gross loaded weight of a truck tractor with a semitrailer, a truck

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tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00
52,001 to 54,000 lbs	931.00
54,001 to 56,000 lbs	992.00
56,001 to 58,000 lbs	1,052.00
58,001 to 60,000 lbs	1,112.00
60,001 to 62,000 lbs	1,172.00
62,001 to 64,000 lbs	1,233.00
64,001 to 66,000 lbs	1,293.00
66,001 to 68,000 lbs	1,352.00
68,001 to 70,000 lbs	1,412.00
70,001 to 72,000 lbs	1,473.00
72,001 to 74,000 lbs	1,533.00
74,001 to 76,000 lbs	1,593.00
76,001 to 78,000 lbs	1,653.00
78,001 and over	65.50

per ton or fraction thereof.

(2) Payment of the fees provided in this section exempts a semitrailer or trailer in combination with a motortruck or truck tractor so licensed from the fees provided in 61-3-701, 61-10-202, 61-10-210, and 61-10-211.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck or truck tractor, licensed under 61-10-201, without payment of any additional fees on the truck or truck tractor, trailer, or semitrailer."

Approved February 4, 1985.

CHAPTER NO. 6

[HB 78]

AN ACT AUTHORIZING USE OF A STAMP AS AN OFFICIAL SEAL; AMENDING SECTION 1-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-4-202, MCA, is amended to read:

"1-4-202. Manner of making a seal. *The* seal of a court or public officer, *when* required by law to be affixed to any instrument, *may be*

affixed by a stamp or impression of the seal upon the paper, or other material on which such instrument is written, alone or upon any substance attached to the paper or other material capable of receiving a visible *stamp or* impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against the signature of the writer."

Approved February 4, 1985.

CHAPTER NO. 7

[HB 87]

AN ACT TO ALLOW THE DEPARTMENT OF MILITARY AFFAIRS TO AUTHORIZE THE CONSTRUCTION OF FEDERAL FACILITIES TO BE USED BY THE STATE; TO ALLOW THE DEPARTMENT OF MILITARY AFFAIRS OR THE DEPARTMENT OF ADMINISTRATION TO ACT AS CONTRACTING AGENCY FOR THE CONSTRUCTION OF SUCH FACILITIES; AMENDING SECTIONS 18-2-101 THROUGH 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-101, MCA, is amended to read:

"**18-2-101. Definitions of building and construction.** In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes *a building, facility, or structure:*

(a) constructed or purchased wholly or in part with state moneys;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of highways;

(d) constructed for the use or benefit of the state with federal or private moneys as provided in 18-2-102(2)(d);

(2) "building" does not include *a building, facility, or structure:*

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of a highway or water conservation project;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling."

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Section 2. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than $25,000 may not be constructed without the consent of the legislature. When a building costing more than $25,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys on federal land for the use or benefit of the state."

Section 3. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more

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than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section.

(8) The department of military affairs may act as contracting agency for buildings constructed under the authority of 18-2-102(2)(d); however, the department of administration may agree to act as contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving such a contract."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 4, 1985.

CHAPTER NO. 8

[HB 5]

AN ACT TO CLARIFY WHEN LEGISLATIVE MEMBERS ARE ENTITLED TO COMPENSATION AND EXPENSES; AMENDING SECTIONS 5-2-301, 5-2-302, AND 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2, classified state employee for those days during which the legislature is in session. The president of the senate and

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the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to $45 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(4) In addition to the mileage allowance provided for in subsection (3), legislators, *upon submittal of an appropriate claim for such mileage reimbursement to the office of legislative council,* are entitled to:

(a) three additional round trips to their place of residence during each regular session; *and*

(b) such additional round trips as are authorized by the legislature during special session.

(5) Legislators are not entitled to any additional mileage allowance under subsection (3) for a special session if it is convened within 7 days of a regular session."

Section 2. Section 5-2-302, MCA, is amended to read:

"5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, *a member* of the *legislature,* while engaged in *legislative* business *with prior authorization of the appropriate funding authority, is* entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301 for each 24-hour period of time (from midnight to midnight), or portion thereof, spent away from home on authorized *legislative* business. However, if time spent for business other than authorized *legislative* business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day."

Section 3. Section 5-11-301, MCA, is amended to read:

"5-11-301. Functions of legislative council — interstate cooperation. It shall be a function of the legislative council to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government;

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(3) establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall be reimbursed *and compensated* as provided *in 5-2-302.*

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 5, 1985.

CHAPTER NO. 9

[HB 60]

AN ACT TO INCLUDE GROSS VEHICLE WEIGHT ENFORCEMENT OFFICERS IN THE LIST OF OFFICERS AUTHORIZED TO DEMAND THAT A PERSON EXHIBIT A LIVESTOCK CERTIFICATE OR PERMIT; AMENDING SECTION 81-3-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-231, MCA, is amended to read:

"81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section if he removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in 81-4-607.

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(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 81-4-607 and for which shipment of livestock an inspection has not been made which after shipment causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, or a market release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, *gross vehicle weight enforcement officer,* highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 5, 1985.

CHAPTER NO. 10

[HB 61]

AN ACT PROVIDING A PENALTY FOR VIOLATION OF THE BRUCELLOSIS VACCINATION REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Penalty.** A person convicted of violating this part shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 81, chapter 2, part 8, and the provisions of Title 81, chapter 2, part 8, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 5, 1985.

CHAPTER NO. 11

[HB 110]

AN ACT REPEALING THE PROVISION THAT AGRICULTURAL LEASES WHOSE DURATION EXCEEDS 10 YEARS ARE VOID; REPEALING SECTION 70-26-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 70-26-207, MCA, is repealed.

Approved February 5, 1985.

CHAPTER NO. 12

[HB 113]

AN ACT TO REQUIRE ALL LABORATORIES TO REPORT CANCER DATA TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 50-15-703, MCA; AND PROVIDING AN IMMEDIATE RULEMAKING EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-703, MCA, is amended to read:

"**50-15-703. Duty to report tumors.** A hospital that provides to any person medical services relating to a tumor designated as reportable by the department *or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor* shall make available to the department all medical and personal information *and laboratory results* relevant to that person's treatment *and condition* on forms provided by the department."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective dates.** Section 2 and this section are effective on passage and approval, but rules adopted pursuant to section 2 may not be made effective until October 1, 1985.

Approved February 5, 1985.

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CHAPTER NO. 13

[HB 123]

AN ACT TO REQUIRE THAT GRANT PROPOSALS FOR CULTURAL AND AESTHETIC PROJECTS BE HEARD BY A LEGISLATIVE APPROPRIATIONS SUBCOMMITTEE; AMENDING SECTION 22-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-2-304, MCA, is amended to read:

"22-2-304. Cultural and aesthetic project appropriations — administration. (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108(2)(h) before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

(4) Grant proposals approved by the legislature are administered by the Montana arts council."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 5, 1985.

CHAPTER NO. 14

[HB 76]

AN ACT TO INCREASE THE FEES CHARGED BY THE COUNTY CLERK FOR FILING NOTARIAL COMMISSIONS AND ISSUING CERTIFICATES OF OFFICIAL CHARACTER TO CONFORM WITH THE FEE CHARGED BY THE SECRETARY OF STATE; AMENDING SECTIONS 1-5-408 AND 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-408, MCA, is amended to read:

"1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall receive for each certificate of official character

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issued, with seal attached, $2. The county clerk of any county in this state shall receive *a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character.*"

Section 2. Section 7-4-2631, MCA, is amended to read:

"**7-4-2631. Fees of county clerk.** (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing and indexing each certificate of fictitious name, $3;

(e) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(f) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(g) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $1;

(h) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(i) for administering an oath with certificate and seal, no charge;

(j) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(k) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; releases of oil, gas, and mineral leases; assignments of overriding royalties; executions; lis pendens; attachments; and all liens), 50 cents per entry in excess of the first entry contained in a single document;

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(l) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(m) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(n) for filing *a copy of notarial commission and issuing a certificate of official character of such notary public, $2;*

(o) for each certified copy of a birth certificate or a death certificate, $2;

(p) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved February 6, 1985.

CHAPTER NO. 15

[HB 10]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EDUCATION AND MINORS; AMENDING SECTIONS 20-3-331, 20-6-321, 20-9-351, 20-9-352, 20-9-407, 20-15-403, 41-3-609, 41-3-1103, 41-3-1121, AND 41-5-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-331, MCA, is amended to read:

"20-3-331. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund."

Section 2. Section 20-6-321, MCA, is amended to read:

"20-6-321. High school district consolidation of districts in two or more counties. Any two or more high school districts located in two or more counties and whose territory is contiguous may consolidate to organize a joint high school district. Whenever a joint district consolidation is considered by two or more districts, the procedure for consolidation without the assumption of bonded indebtedness prescribed in 20-6-315 and 20-6-319 must be used, except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its

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resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-315."

Section 3. Section 20-9-407, MCA, is amended to read:

"20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the *45%* limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of *45%* of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in *20-9-406*. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 4. Section 20-9-351, MCA, is amended to read:

"20-9-351. Funding of deficiency in state equalization aid. If the estimated state equalization level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of the superintendent of public instruction to request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that would be sufficient to complete the funding of the foundation programs of the elementary or secondary schools, or both, for the current biennium."

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Section 5. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose. *The proceeds of such an appropriation shall be deposited to the state special revenue fund, permissive account.*

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of *subsections* (3) *and (4)* of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of *subsections* (3) *and (4)* of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. *The supplemental appropriation shall provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation shall be deposited to the state special revenue fund, permissive account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the*

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superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Distribution under this section from the state special revenue fund shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 6. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 7. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to *40-6-135*;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

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(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions."

Section 8. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

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(f) apportion and allocate placement budgets to all judicial districts; *and*

(g) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in district youth guidance homes, shelter care programs, and foster care homes for youths committed to the department of institutions who need to be placed in such facilities. Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services."

Section 9. Section 41-3-1121, MCA, is amended to read:

"41-3-1121. Foster care payments for youth court placements. (1) The youth court may establish procedures for finding, maintaining, and administering *substitute* care and foster homes approved by the court for youth within the provisions of this part.

(2) Pursuant to 41-3-1122, the department shall make a foster care payment for a child placed by the youth court if:

(a) the child is placed in a youth care facility licensed by the department or by an appropriate licensing authority from another state;

(b) the youth court enters into an agreement according to federal regulations with the department for the placement of children;

(c) the placement of the child is reviewed as required by 41-3-1115; and

(d) the youth court retains supervision of the child in placement."

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Section 10. Section 41-5-601, MCA, is amended to read:

"41-5-601. Publicity. (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsection (2).

(2) When a petition is filed under *41-5-501*, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult."

Approved February 8, 1985.

CHAPTER NO. 16

[HB 28]

AN ACT REVISING THE DEFINITION OF WINE AND TABLE WINE; AMENDING SECTION 16-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

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(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Rules" means rules published by the department pursuant to this code.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Table wine" means wine as defined below which contains not more than *16%* alcohol by volume.

(20) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(21) "Wine" means an alcoholic beverage made from *or containing* the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains *more* than *0.5% but not* more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

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Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 8, 1985.

CHAPTER NO. 17

[HB 31]

AN ACT ELIMINATING THE PROVISIONS FOR KEEPING A DUPLICATE ASSESSMENT BOOK; REPEALING SECTION 15-8-703, MCA; AND AMENDING SECTIONS 15-8-707, 15-8-710, 15-17-113, AND 15-17-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 15-8-703, MCA, is repealed.

Section 2. Section 15-8-707, MCA, is amended to read:

"15-8-707. Correction of defects in form of assessment book. (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in form in *the* assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation, the consent of the county attorney must be obtained before any correction may be made."

Section 3. Section 15-8-710, MCA, is amended to read:

"15-8-710. Assessment and delinquent books prima facie evidence. The assessment book or delinquent list or a copy thereof certified by the county clerk and recorder showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with."

Section 4. Section 15-17-113, MCA, is amended to read:

"15-17-113. Duty of treasurer on delivery of protest. In case any owner of property advertised to be sold for delinquent taxes at least 6 days before the time advertised for the sale to take place delivers to the county treasurer his protest in writing against such sale, signed by himself or his

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agent, claiming that the assessment is void in whole or in part and, if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded, it is the duty of the treasurer either to:

(1) sell the property assessed for the whole amount appearing upon the assessment book; or

(2) withdraw the property from sale and report the case to the board of county commissioners for its direction in the premises, and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale."

Section 5. Section 15-17-207, MCA, is amended to read:

"15-17-207. County as purchaser. In case there is no purchaser in good faith for the same, as provided in this code, on the first day that the property is offered for sale, then the whole amount of the property assessed must be struck off to the county as the purchaser and the duplicate certificate thereof delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser, and in such case, the county treasurer must make an entry "sold to the county" on the assessment book opposite the tax and he must be credited with the amount thereof in the settlement."

Approved February 8, 1985.

CHAPTER NO. 18

[HB 124]

AN ACT REQUIRING A LABOR OR EMPLOYEE ORGANIZATION TO GUARANTEE CERTAIN RIGHTS AND SAFEGUARDS TO PUBLIC EMPLOYEES IN ORDER TO BE RECOGNIZED AS THE EXCLUSIVE REPRESENTATIVE FOR COLLECTIVE BARGAINING PURPOSES; GIVING THE BOARD OF PERSONNEL APPEALS JURISDICTION TO HEAR AND DECIDE DISPUTES INVOLVING THESE RIGHTS AND SAFEGUARDS; AMENDING SECTION 39-31-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-206, MCA, is amended to read:

"39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. *(1)* Certification *or recognition* as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

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(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1)."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 8, 1985.

CHAPTER NO. 19

[HB 32]

AN ACT ESTABLISHING A BEER IMPORTER LICENSE, LICENSING CRITERIA, AND PROCEDURES FOR IMPORTING BEER INTO MONTANA; DEFINING "IMPORT"; ESTABLISHING A LICENSE FEE; AMENDING SECTIONS 16-1-106, 16-3-101, 16-3-104, 16-3-201, 16-3-211 THROUGH 16-3-213, 16-3-221 THROUGH 16-3-226, 16-3-230, 16-3-241 THROUGH 16-3-244, 16-4-101, 16-4-401, 16-4-407, AND 16-4-501, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

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(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(22) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

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(23) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-3-101, MCA, is amended to read:

"16-3-101. Liquor dispensed only in accordance with code. No brewer, *beer importer,* distiller, or manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor except as may be permitted by and in accordance with the rules made under this code."

Section 3. Section 16-3-104, MCA, is amended to read:

"16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer, *beer importer,* or wholesaler."

Section 4. Section 16-3-201, MCA, is amended to read:

"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful. It shall be unlawful to manufacture, *import,* sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than herein prescribed or other than in the manner permitted by this code."

Section 5. Section 16-3-211, MCA, is amended to read:

"16-3-211. Monthly report of brewer or beer importer — inspection of books and premises. Every brewer *and every beer importer* licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured *or imported* by him and the amount sold by him in the previous month and of his inventory. The department shall have the right at any time to make an examination of any brewer's *or beer importer's* books and of his premises and otherwise check the accuracy of any such return or to check the alcoholic content of beer manufactured *or imported* by him."

Section 6. Section 16-3-212, MCA, is amended to read:

"16-3-212. Brewers' or beer importers' sales to wholesalers lawful. It shall be lawful for any *licensed* brewer to sell or *deliver* beer manufactured by him to any licensed wholesaler. *It shall be lawful for any licensed beer importer to sell or deliver beer imported by him to any licensed wholesaler.*"

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Section 7. Section 16-3-213, MCA, is amended to read:

"16-3-213. Brewers or beer importers not to retail beer — original package exception. It shall be unlawful for any brewer or breweries *or beer importer* to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers *and beer importers* from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail."

Section 8. Section 16-3-221, MCA, is amended to read:

"16-3-221. Illegal acts by brewers or beer importers. It is unlawful for any brewer *or beer importer* or any officer, agent, or representative of any brewer *or beer importer* to:

(1) coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's *or beer importer's* products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer *or beer importer* from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer *or beer importer* then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer *or imported by the beer importer.* A brewer *or beer importer* may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer *or beer importer* cancels or terminates a wholesaler's franchise, the brewer *or beer importer* has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer *or beer importer* doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer *or beer importer.*"

Section 9. Section 16-3-222, MCA, is amended to read:

"16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler *or a*

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beer importer and a wholesaler shall specifically set forth or contain the following:

(1) that the brewer *or beer importer* or any officer, agent, or representative of any brewer *or beer importer* and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer *or beer importer* to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer *or the wholesaler and beer importer* and may not be changed without the mutual consent of both the wholesaler and brewer *or the wholesaler and beer importer.*

(2) the agreed-upon brands of the brewer *or beer importer* to be sold by the wholesaler;

(3) that the brewer *or beer importer* recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's *or beer importer's* products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer *or beer importer* of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer *or beer importer* shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise."

Section 10. Section 16-3-223, MCA, is amended to read:

"16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer *or beer importer* in writing is required for such transferee to continue as a wholesaler of said brewer *or beer importer*, which consent shall consider the personal, financial, and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld."

Section 11. Section 16-3-224, MCA, is amended to read:

"16-3-224. Contractual or franchise relationship — existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer *or beer importer* within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer *or beer importer* or its agent for any beer to a licensed wholesaler within this state;

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(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer *or beer importer* or its agent for the shipment of an order of beer intended for sale within this state."

Section 12. Section 16-3-225, MCA, is amended to read:

"16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer *or between a wholesaler and a beer importer* at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer *or beer importer* shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect."

Section 13. Section 16-3-226, MCA, is amended to read:

"16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department. An exact copy of all agreements, contracts, or franchises between a brewer *or beer importer* and a wholesaler shall be filed with the department as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not upon record with the department shall not be considered by any court as having any force or effect."

Section 14. Section 16-3-230, MCA, is amended to read:

"16-3-230. Out-of-state beer required to be shipped to wholesaler. All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and by him unloaded into his warehouse in Montana or subwarehouse in Montana. A brewer *or beer importer* may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold, which records may at all times be inspected by any representative of the department. Said wholesaler shall distribute said beer from such warehouse or subwarehouse and shall keep records at his principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. Said records may at all times be inspected by any member or representative of the department."

Section 15. Section 16-3-241, MCA, is amended to read:

"16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions. It shall be unlawful for any brewer, *beer importer,* or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or

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decorating on or within such premises; provided, however, that it shall be lawful for a brewer, *beer importer*, or wholesaler to furnish, give, or loan to a retail licensee:

(1) bottle openers, can openers, and trays, with or without advertising matter thereon;

(2) advertising matter or novelties, of a value of not to exceed $50 per brewery *or beer importer* in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(3) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(4) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."

Section 16. Section 16-3-242, MCA, is amended to read:

"**16-3-242. Financial interest in retailers prohibited.** No brewer, *beer importer*, or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer, *beer importer*, or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, *beer importer*, or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer, *beer importer*, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or his premises;

(2) such brewer, *beer importer*, or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."

Section 17. Section 16-3-243, MCA, is amended to read:

"**16-3-243. Seven-day credit limitation.** No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, *beer importer*, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of

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brewers, *beer importers*, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion."

Section 18. Section 16-3-244, MCA, is amended to read:

"16-3-244. Beer advertising limitations. It shall be lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers *and beer importers* contained in 16-3-241 of this code and subject to the following restrictions on retailers. No retail licensee shall display or permit to be displayed on the exterior portion or surface of such retailer's place of business or on the exterior portion or surface of any building of which said place of business is a part or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, *beer importer*, wholesaler, or place of manufacture of any beer whatsoever."

Section 19. Section 16-4-101, MCA, is amended to read:

"16-4-101. Applications for sale, import, or manufacture of beer —- qualifications of applicant. (1) Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply to the department for a *license* to do so and pay with such application the license fee prescribed. The department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person.

(2) Upon being satisfied, from such application or otherwise, that such applicant is qualified, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant.

(3) If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned."

Section 20. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, *importer*, bottler, or distributor of beer, wine, or liquor;

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(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, *importer*, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana.

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(4) In the case of a license that permits the manufacture, *importing*, or wholesaling of an alcoholic beverage, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana.

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 21. Section 16-4-407, MCA, is amended to read:

"16-4-407. Suspension or revocation of licenses. Each July 1, the department shall issue licenses to brewers, *beer importers*, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency."

Section 22. Section 16-4-501, MCA, is amended to read:

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"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer *and each beer importer*, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

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(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

Section 23. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 24. **Authority to proceed with rulemaking.** The department of revenue may initiate rulemaking proceedings under section 23 on or after passage and approval of this act, but no rules under section 23 may be made effective prior to the effective date of sections 1 through 22.

Section 25. **Effective date.** (1) Sections 1 through 22 and this subsection (1) are effective July 1, 1985.

(2) Sections 23, 24, and this subsection (2) are effective on passage and approval.

Approved February 11, 1985.

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CHAPTER NO. 20

[HB 42]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, AND 16-6-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(f) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(g) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

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(h) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(i) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(j) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(k) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and *Title 15, chapter 23, part 8*; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(l) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-6-101, MCA, is amended to read:

"15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with *this part*."

Section 3. Section 15-6-140, MCA, is amended to read:

"15-6-140. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) coal and ore haulers;

(d) trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102;

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(e) all trailers exceeding 18,000 pounds maximum gross loaded weight, including those prorated under 15-24-102 and except those subject to a fee in lieu of property tax;

(f) theater projectors and sound equipment; and

(g) all other property not included in *any other class in this part* except that property subject to a fee in lieu of a property tax.

(2) Class ten property is taxed at 16% of its market value."

Section 4. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1979, all property classified in *15-6-134* must be appraised on its market value in the same year. The department must publish a rule specifying the year used in the appraisal."

Section 5. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name

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of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(f) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(3) Credits must be assessed as provided in 15-1-101(1)(c)."

Section 6. Section 15-23-106, MCA, is amended to read:

"15-23-106. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under *15-23-303*, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county shall be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department."

Section 7. Section 15-24-911, MCA, is amended to read:

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"15-24-911. Livestock assessment. (1) The department of revenue or its agent must assess all livestock on the average inventory basis as provided in 15-24-908 through 15-24-910 unless:

(a) the owner elects to have his livestock assessed on March 1 of each year as provided in (4); and

(b) the assessor of the county in which the *livestock is* located on assessment date accepts this election.

(2) The owner shall file his election with the county assessor on the statement required in 15-24-903.

(3) The county assessor shall accept the owner's election unless he determines that the election is made to evade property taxation. The livestock owner may appeal the assessor's decision to the county tax appeal board and the state tax appeal board under the procedures established in Title 15, chapter 15, part 1, and chapter 2, part 3.

(4) If an owner chooses the method of assessment provided in (1)(a), the department of revenue or its agent must assess the owner's livestock in each county as of March 1 of each year. This livestock shall be assessed to the person by whom owned or claimed or in whose possession or control it was at midnight of March 1 in each year."

Section 8. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301 *and in lieu of* motor vehicle license fees, gross vehicle weight fees, *and* overwidth and overheight permits *provided for in* Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) The fee required by this section must be collected by the department of highways. Upon payment of the fee, the department of highways must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or

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resident in his business of custom combining in the state, which device is valid for the calendar year in which the fee is collected.

(4) All fees collected under this section must be distributed not later than January 31 immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the state special revenue fund for the department of highways.

(5) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(6) Any owner or operator of any equipment included in the unit definition in subsection (1) or (2) of this section who violates any provision of this section is guilty of a misdemeanor and punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Section 9. Section 15-31-123, MCA, is amended to read:

"15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that does not have:

(a) more than 10 shareholders;

(b) a person who is not an individual (other than an estate or other than a trust described in *subsection (8)*) as a shareholder;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana income.

(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

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(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed $500.

(6) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

(8) (a) For purposes of subsection (2)(b), any of the following trusts may be a shareholder without disqualifying the business for the investment credit:

(i) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;

(ii) a trust created primarily to exercise the voting power of stock transferred to it;

(iii) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

(b) In the case of a trust described in subsection (8)(a)(ii), each beneficiary of the trust shall be treated as a shareholder."

Section 10. Section 15-31-303, MCA, is amended to read:

"**15-31-303. When taxable in another state.** For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(1) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not *subject the taxpayer to a net income tax.*"

Section 11. Section 15-55-106, MCA, is amended to read:

"**15-55-106. Appeals and refunds.** (1) Any such freight line company or railroad company, on or before June 1 of the year in which the tax herein imposed has been paid, may file written complaint with the state tax appeal board concerning the correctness of the rate used or the correctness of the amount of the tax imposed or any other matter affecting the complainant under the provisions of this chapter.

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(2) Upon filing such complaint, the state tax appeal board shall set the same for hearing and shall give written notice thereof to the complainant at least 10 days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power and it shall be its duty to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess.

(3) Within 6 months after such determination, the claimant may present to the department a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim, and the same shall be paid in the same manner as other claims against the state are paid.

(4) In order to determine the amount of tax such freight line company would pay, the department may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the 12-month period ending December 31 of the preceding year and may then apply to such value the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities, and other taxing subdivisions for state, county, school and municipal, and other purposes."

Section 12. Section 15-57-102, MCA, is amended to read:

"15-57-102. License to operate store — exception for grain merchandisers. (1) It shall be unlawful for any person to open, establish, operate, or maintain any store or stores in this state without first having obtained a license to do so from the department of revenue as hereinafter provided.

(2) A person establishing or operating any store in this state engaged solely in the business of grain merchandising and who is licensed under Title 80, chapter 4, is exempt from the provisions of this chapter as to such store."

Section 13. Section 16-1-205, MCA, is amended to read:

"16-1-205. Local option. The electors of a county may, by approving an initiative as provided under *7-5-131 through 7-5-137*, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, chapter 5, part 1."

Section 14. Section 16-6-106, MCA, is amended to read:

"16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing. (1) Where alcoholic beverage is found by any investigator or peace officer on any premises or in any place in such quantities as to satisfy the investigator or peace officer that such alcoholic

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beverage is being had or kept contrary to any of the provisions of this code, it shall be lawful for the investigator or peace officer to forthwith seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was had or kept and immediately turn said alcoholic beverage over to the department.

(2) The department shall commence an action in the district court of the county in which the alcoholic beverage is found and seized against said alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the department claims the right to the possession of the alcoholic beverage and shall demand that all persons who claim any right to the possession of the alcoholic beverage shall show the nature of their claim or claims and that the court declare the alcoholic beverage contraband and that the court order the alcoholic beverage be forfeited to the state of Montana.

(4) A summons shall be issued, served, or published as in other civil actions provided by Title 25, except that the summons shall be published in the county where the alcoholic beverage was seized if a newspaper is published in said county."

Approved February 11, 1985.

CHAPTER NO. 21

[HB 80]

AN ACT TO GENERALLY CLARIFY CERTAIN LAWS RELATING TO HIGHER EDUCATION AND THE BOARD OF PUBLIC EDUCATION BY MAKING THE EXISTENCE OF THE COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS DISCRETIONARY, BY ELIMINATING THE RESIDENT STUDENT FINANCIAL ASSISTANCE PROGRAM ADVISORY COUNCIL, BY CLARIFYING THE MEETING REQUIREMENTS FOR THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS, BY CHANGING A REFERENCE TO PROFESSIONAL ASSISTANT TO EXECUTIVE SECRETARY, BY CLARIFYING POWERS OF THE BOARD OF REGENTS, BY CHANGING THE REPORTING DATE FOR CERTAIN REPORTS RELATING TO FEDERAL FUNDS, AND BY REPEALING A LAW RELATING TO ENDOWED CHAIRS AT STATE INSTITUTIONS; AMENDING SECTIONS 2-15-1515, 20-2-101, 20-2-111, 20-2-112, 20-25-301, 20-25-424, AND 20-26-103, MCA; REPEALING SECTIONS 2-15-1517 AND 20-25-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1515, MCA, is amended to read:

"2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs *that may*

be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request the governor to appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university *upon the request of the board of regents of higher education.*

(3) The *commission* members *appointed pursuant to subsection (2)(b)* shall serve for *the period of existence of the commission; however, such period of service may not exceed 4 years and is contingent upon continued status as a trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.*

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence."

Section 2. Section 20-2-101, MCA, is amended to read:

"**20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.** (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

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(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents."

Section 3. Section 20-2-111, MCA, is amended to read:

"20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) The *executive secretary* shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The *executive secretary* shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education."

Section 4. Section 20-2-112, MCA, is amended to read:

"20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet *at least* quarterly.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board."

Section 5. Section 20-25-301, MCA, is amended to read:

"20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:

(1) have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

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(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of such institutions;

(5) keep a record of its proceedings;

(6) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) have general control of all receipts and disbursements of the system;

(9) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) confer upon the executive board of each of the units of the system such authority as may be deemed expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) prevent unnecessary duplication of courses at the units of the system;

(13) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees and fix their compensation. The regents shall prepare a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.

(14) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(15) adopt a seal bearing on its face the words "Montana university system", which *must* be affixed to all diplomas and all other papers, instruments, or documents which may require it."

Section 6. Section 20-25-424, MCA, is amended to read:

"20-25-424. Receipt of funds. (1) The treasurer of Montana state university may receive the cash appropriation received from the United

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States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before *December* 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress."

Section 7. Section 20-26-103, MCA, is amended to read:

"20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

(2) "Postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under chapter 30 of this title.

(3) "Program advisory council" means the *guaranteed student loan* advisory council created by *2-15-1520*."

Section 8. **Repealer.** Sections 2-15-1517 and 20-25-105, MCA, are repealed.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved February 11, 1985.

CHAPTER NO. 22

[HB 88]

AN ACT PROVIDING THAT WHILE A PEACE OFFICER IS IN ANOTHER JURISDICTION WHICH HAS REQUESTED HIS ASSISTANCE HE IS UNDER THE AUTHORITY OF THE ENTITY REQUESTING HIS ASSISTANCE; AMENDING SECTION 44-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-11-101, MCA, is amended to read:

"44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement

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entity within the state of Montana. A peace officer, while *in the jurisdiction of the requesting officer or entity and while* on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity *and is under the authority of the requesting officer or entity.*"

Approved February 11, 1985.

CHAPTER NO. 23

[HB 137]

AN ACT ALLOWING A PERSON WHO IS TEMPORARILY TOTALLY DISABLED UNDER THE WORKERS' COMPENSATION LAW TO USE WAGE CREDITS FROM EMPLOYMENT PRIOR TO THE DISABILITY FOR PURPOSES OF UNEMPLOYMENT INSURANCE; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the four quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within *24* months of the *date on which the* individual's *disability was incurred.*

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

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(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant

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and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

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(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved February 11, 1985.

CHAPTER NO. 24

[HB 6]

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO MINING AND TO WATER RIGHTS AND USE; AMENDING SECTIONS 82-4-254, 85-2-123, 85-8-624, AND 90-6-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation — penalty — waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than $750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines such violation is not of potential harm to public health, public safety, or the environment *and does not impair* the administration of this part. The board of land commissioners shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of

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receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of *this* part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned

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for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 2. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124 *and 85-2-241*, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 3. Section 85-8-624, MCA, is amended to read:

"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in *13-1-401(3)*.

(b) The manner of conducting the election shall be as provided in 85-8-304 and as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration may be required.

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land

within the district but has been assessed or will have his improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and *the election administrator or deputy election administrator shall* give them notice as provided in *13-1-401(3).*

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary *must be included in* the notice provided for by *13-1-401(3).* In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Section 4. Section 90-6-307, MCA, is amended to read:

"90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The impact plan shall include:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services, including but not limited to police and fire protection, sewage, water treatment, schools, road construction and upkeep, education, and medical care, which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

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(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to commencement of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local governmental unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan shall be approved by the board.

(5) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. If within 30 days the local government unit and the developer cannot resolve the objection, the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(6) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(7) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will make all the payments to the board required in the approved impact plan and according to the time schedule contained in the approved impact plan.

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(8) The board shall deposit all payments received from the developer into the hard-rock mining impact account established by 90-6-304.

(9) The board shall notify the department of state lands of its receipt of the written guaranty of payment, of each required payment, and of any failure of the developer to comply with this section.

(10) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact *account* identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(11) If it is determined that an objection filed by an affected local government unit under subsection (4) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part."

Approved February 13, 1985.

CHAPTER NO. 25

[HB 142]

AN ACT TO CONFORM THE TIME LIMIT WITHIN WHICH A PREMARITAL SEROLOGICAL TEST PERFORMED OUTSIDE OF MONTANA MUST BE PERFORMED TO THAT REQUIRED FOR SUCH TESTS PERFORMED WITHIN MONTANA; AMENDING SECTION 40-1-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-205, MCA, is amended to read:

"**40-1-205. Certificates from other states or for military personnel — when acceptable.** Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana if such tests are performed not more than *6 months* before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests and were performed not more than *6 months* before the issuance of the marriage license."

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Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 14, 1985.

CHAPTER NO. 26

[SB 71]

AN ACT TO GENERALLY REVISE THE PROCEDURE FOR REVIEWING CERTIFICATE OF NEED APPLICATIONS FOR HEALTH CARE FACILITIES; ELIMINATING APPEALS TO THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 50-5-302 AND 50-5-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-302, MCA, is amended to read:

"50-5-302. (Temporary) Notice of intent — application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of notices of intent and applications;

(b) the scheduling and consolidation of reviews of similar proposals;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of [section 9];

(d) the format of public informational hearings and reconsideration hearings; and

(e) the establishment of batching periods for certificate of need applications for new beds, establishment of new services, and replacement of health care facilities.

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(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall submit to the department and the appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. The letter of intent must be placed in the appropriate batch, if any. *Any person who applies for comparative review by submitting a challenge letter of intent during the challenge period immediately following the batch must submit an application within 30 days after the close of the challenge period.*

(4) Within 15 calendar days after receipt of the application, the department shall determine whether it is complete. If, after the 15 days, the application is found incomplete, the department shall request the necessary additional information within 5 working days. Upon receipt of the additional information from the applicant, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15-day period, the application shall be deemed to be complete. If the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch.

(5) After *an application* is designated complete, notification must be sent to the *applicant* and all other affected persons regarding the department's projected time schedule for review of the *application*. The review period for an application may be no longer than *60* calendar days after the notice is sent unless *a hearing is required, in which case the review must be completed within 120 days after the notice is sent or, if a challenging application has been submitted as provided in subsection (3), within 120 days after the notice has been sent for all such challenging applications. A longer period is permitted with the consent of all affected applicants.* All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other. During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department. *Such a hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.*

(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period. If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision. **(Repealed effective July 1, 1987—sec. 13, Ch. 329, L. 1983.)"**

Section 2. Section 50-5-306, MCA, is amended to read:

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"**50-5-306. (Temporary) Right to hearing and appeal.** (1) An affected person may request the department to hold a public hearing and to reconsider its decision. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 20 calendar days after the initial decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 20 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 30 days after the conclusion of the reconsideration hearing.

(2) Any affected person may appeal *the department's final* decision to the district court as provided in Title 2, chapter 4, part 7.

(3) The department may by rule prescribe in greater detail the hearing and appellate procedures. **(Repealed effective July 1, 1987—sec. 13, Ch. 329, L. 1983.)**"

Section 3. **Extension of rulemaking authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 15, 1985.

CHAPTER NO. 27

[HB 77]

AN ACT TO GENERALLY REVISE RECORDING FEES CHARGED BY THE COUNTY CLERK; AMENDING SECTIONS 7-4-2631 AND 7-4-2632, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"**7-4-2631. Fees of county clerk.** (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

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(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing and indexing each certificate of fictitious name, $3;

(e) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(f) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(g) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, *$2*;

(h) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(i) for administering an oath with certificate and seal, no charge;

(j) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(k) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(l) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(m) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service;

(n) for each certified copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

Section 2. Section 7-4-2632, MCA, is amended to read:

"7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge *$5* for each page or fraction of a page of the instrument for recording."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved February 15, 1985.

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CHAPTER NO. 28

[HB 148]

AN ACT TO REVISE THE REQUALIFICATION TRAINING REQUIREMENTS FOR FARM APPLICATORS UNDER THE MONTANA PESTICIDES ACT; AMENDING SECTION 80-8-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. The fee for the permit is $15. The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system of issuing permits.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented by such applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course shall require and demonstrate practical knowledge of the applicator's ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

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(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by *attending a program consisting of 6 hours of training.* The department shall establish by rule a uniform system of administering the requalification training *program.* The department may credit only training related to the standards set forth in subsection (3).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbors if he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 2. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 15, 1985.

CHAPTER NO. 29

[HB 9]

AN ACT PROVIDING THAT STATEMENTS OF INTENT NEED NOT ACCOMPANY DELEGATIONS OF AUTHORITY EXTENDING PREVIOUSLY ENACTED RULEMAKING AUTHORITY TO NEWLY ENACTED OR AMENDED AGENCY DUTIES; AMENDING SECTIONS 5-4-402 AND 5-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-404, MCA, is amended to read:

"5-4-404. Statement of intent. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority, *other than the delegation of authority referred to in 5-4-402(3),* and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill."

Section 2. Section 5-4-402, MCA, is amended to read:

"5-4-402. Purpose. (1) The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies.

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(2) The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

(3) A statute enacted or amended may not be implemented by an administrative rule in an area in which a state agency has existing rulemaking authority unless the statute enacted or amended is accompanied by a delegation of authority extending such authority to the statute as enacted or amended."

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, and prospectively to any bill introduced or enacted on or after January 7, 1985.

Approved February 20, 1985.

CHAPTER NO. 30

[HB 34]

AN ACT SETTING THE STANDARD INCOME TAX DEDUCTION FOR JOINT RETURNS AND HEAD OF HOUSEHOLD RETURNS AT TWICE THE AMOUNT FOR SINGLE RETURNS; AMENDING SECTION 15-30-122, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) In the case of a resident individual, a standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns by the inflation factor for that taxable year and round the product to the nearest $10. *The standard*

deduction for joint returns and qualified head of household returns shall be twice the amount for single returns. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies to taxable years beginning after December 31, 1984.

Approved February 20, 1985.

CHAPTER NO. 31

[HB 116]

AN ACT TO DELETE THE REQUIREMENT THAT A PRIVATELY OWNED PUBLIC SWIMMING POOL HAVE A LIFEGUARD UNLESS A PERSON CERTIFIED AS TRAINED IN BASIC WATER SAFETY MEASURES IS ACCESSIBLE TO THE POOL; AMENDING SECTION 50-53-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-107, MCA, is amended to read:

"50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 20, 1985.

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CHAPTER NO. 32

[HB 94]

AN ACT REASSIGNING IMPLEMENTATION OF THE LIGHT VEHICLE REREGISTRATION BY MAIL LAW TO THE DIVISION OF MOTOR VEHICLES; AMENDING SECTION 61-3-535, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-535, MCA, is amended to read:

"61-3-535. Light vehicle reregistration by mail. (1) The *division* shall develop a procedure to permit the reregistration of light vehicles with the county treasurer by mail at the option of the owner of the vehicle. The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration.

(2) The form to be returned to the county treasurer by the applicant, with the appropriate fees, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) The procedure for mail reregistration must be in effect by January 1, 1982.

(4) The *division* may adopt rules to implement the mail reregistration procedure."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 21, 1985.

CHAPTER NO. 33

[HB 195]

AN ACT REPLACING REFERENCES TO "MOBILE HOMES" IN TITLE 50, CHAPTER 60, MCA, WITH "FACTORY-BUILT BUILDINGS"; DEFINING "FACTORY-BUILT BUILDING"; AND AMENDING SECTIONS 50-60-101, 50-60-401, AND 50-60-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

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(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation. "Factory-built building" does not include manufactured housing constructed after June 15, 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

(7) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(8) "Local legislative body" means the council or commission charged with governing the municipality.

(9) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection *(10)* of this section.

(10) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

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(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(11) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(12) "Recreational vehicle" means *a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:*

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 2. Section 50-60-401, MCA, is amended to read:

"50-60-401. Department to adopt rules for factory-built buildings and recreational vehicles. The department *may adopt by reference nationally recognized construction standards, in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such standards, for the construction of factory-built buildings* and recreational vehicles as defined in 50-60-101."

Section 3. Section 50-60-402, MCA, is amended to read:

"50-60-402. Factory-built buildings and recreational vehicles to comply with standards. (1) No person, firm, or corporation may manufacture, sell, or offer for sale any new *factory-built building* or recreational vehicle unless such *factory-built building* or recreational vehicle, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(2) Any *factory-built building* or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All *factory-built buildings* or recreational vehicle units thus approved shall be acceptable as meeting the requirements of parts 1

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through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance."

Approved February 21, 1985.

CHAPTER NO. 34

[HB 27]

AN ACT TO DEFINE AND ESTABLISH LIEN PRIORITY OF WITHHOLDING TAXES; AMENDING SECTION 15-30-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-208, MCA, is amended to read:

"**15-30-208. Withheld taxes held in trust for state — warrants to collect.** (1) Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana.

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. *The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.*"

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability date.** This act is effective on passage and approval and applies to taxes due after January 1, 1985.

Approved February 22, 1985.

CHAPTER NO. 35

[HB 30]

AN ACT EMPOWERING THE DEPARTMENT OF REVENUE TO COMPEL UNCOOPERATIVE INDIVIDUALS TO FILE CORRECT STATE TAX RETURNS AND REPORTS THROUGH THE FILING OF A PETITION FOR AN ORDER TO SHOW CAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Order to show cause — action by department.** (1) Whenever a taxpayer fails to file a return or report within 90 days after the due date and refuses to file the return or report within 60 days after

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written notification or demand from the department, the department may file a petition in the district court for an order to show cause.

(2) The written notification or demand shall recite the facts and circumstances showing the failure of the taxpayer to file the return or report, must be sent by certified mail to the address of the taxpayer as shown on the records of the department and to any other address of the taxpayer known to the department, and shall inform the taxpayer that upon failure to receive the return or report within 60 days from the date of the notification or demand the department will seek an order to show cause in district court.

(3) A petition filed under the authority of subsection (1) must be verified and shall set forth in detail the facts and circumstances showing the failure of the taxpayer to file the return or report and the response, if any, of the taxpayer to the written notification and demand.

(4) When a verified petition is filed under the authority of subsection (1), the court shall review the petition to determine if the department has made a prima facie showing that an order to show cause should be issued and, if such a showing has been made, shall issue an order directed to the taxpayer to file the return or report within 30 days of the order or to show cause, at a special time and place, why the return or report should not be filed.

(5) A copy of the petition and a certified copy of the order must be served upon the taxpayer. Service may be made pursuant to the provisions of Rule 4D(1)(b), M.R.Civ.P. If the taxpayer fails to acknowledge service, the sheriff shall serve a copy of the petition and a certified copy of the order on the taxpayer pursuant to Rule 4D(2) or (3), M.R.Civ.P.

(6) At the hearing on the order to show cause, evidence produced that the department's records show that the return or the report has not been filed is prima facie evidence that the return or report has not been filed.

(7) Upon finding by a preponderance of the evidence that the taxpayer has not filed the return or report as required by law, the court may issue a further order compelling the filing of the return or report, and the taxpayer's failure to comply with the order may thereafter be proceeded against as a contempt.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to section 1.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 22, 1985.

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CHAPTER NO. 36

[HB 350]

AN ACT TO PROVIDE THAT THE FEES FOR COMMERCIAL FEED REGISTRATION AND DISTRIBUTION PERMITS ARE NONREFUNDABLE; TO REQUIRE APPLICANTS FOR REGISTRATION OF COMMERCIAL FEEDS TO SUBMIT CERTAIN INFORMATION TO THE DEPARTMENT OF AGRICULTURE; AND AMENDING SECTION 80-9-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-201, MCA, is amended to read:

"80-9-201. Permits and registration. (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a *nonrefundable* fee of $25 per calendar year for each facility, distribution point, or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute in this state a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a *nonrefundable* fee of $5 for each product other than a pet food or specialty pet food and a *nonrefundable* fee of $25 each for each pet food or specialty pet food.

(3) An applicant for registration shall file with the department the following information:

(a) his name and address;

(b) a complete copy of the label or label facsimile that will appear on the product;

(c) when requested by the department, promotional material and claims made about the product; and

(d) any other necessary information requested by the department.

(4) Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(5) The department may refuse registration of any commercial feed not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with this chapter. No registration

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may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this chapter."

Section 2. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 22, 1985.

CHAPTER NO. 37

[HB 81]

AN ACT DESIGNATING THE DUCK-BILLED DINOSAUR MAIASAURA PEEBLESORUM AS THE OFFICIAL STATE FOSSIL.

WHEREAS, Montana is the home of one of the world's most important dinosaur discoveries, specifically the duck-billed dinosaur Maiasaura peeblesorum, which is found nowhere else in the world; and

WHEREAS, the duck-billed dinosaur, when newly hatched, was less than 14 inches long and weighed about 1 ½ pounds but grew to over 30 feet in length and weighed about 3 tons; and

WHEREAS, dinosaur sites in Montana contain fossilized eggs, embryonic bone, babies, juveniles, and adults of several different types of dinosaurs; provide valuable evidence that duck-billed dinosaurs nested in extensive colonies and had nests 6 feet in diameter that contained as many as 20 eggs; and demonstrate for the first time parental care of dinosaur young; and

WHEREAS, the Montana discoveries have tremendous scientific value and will continue to receive widespread publicity in national and international journals, as well as in popular literature and television and radio programs; and

WHEREAS, naming a dinosaur as the state fossil will increase awareness that Montana is one of the best places in the world for the occurrence of important dinosaur discoveries and will have real economic value in terms of tourist promotion; and

WHEREAS, the name Maiasaura peeblesorum means "good mother lizard" (Maiasaura) and honors the Peebles family (peeblesorum), a Montana ranch family from the Choteau area where the discoveries were made.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State fossil.** The duck-billed dinosaur Maiasaura peeblesorum is the official Montana state fossil.

Approved February 22, 1985.

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CHAPTER NO. 38

[HB 13]

AN ACT REVISING THE REQUIREMENTS CONCERNING FILING OF A STATE-TRIBAL COOPERATIVE AGREEMENT; REMOVING THE REQUIREMENT FOR GUBERNATORIAL APPROVAL OF AN AGREEMENT INVOLVING A STATE AGENCY; AMENDING SECTION 18-11-107, MCA; AND REPEALING SECTION 18-11-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-11-107, MCA, is amended to read:

"**18-11-107. Filing of agreement.** *(1)* Within 10 days after approval by the attorney general and *signature of the parties*, an agreement made pursuant to this chapter must be filed with:

(a) the *area office of the bureau of Indian affairs* of the United States department of the interior *having trust responsibility for the tribe that is party to the agreement or its successor agency*;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, *except as provided in (2) of this section*;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County."

Section 2. **Repealer.** Section 18-11-106, MCA, is repealed.

Approved February 27, 1985.

CHAPTER NO. 39

[HB 22]

AN ACT TO PERMIT THE EXPENDITURE OF FUNDS FROM THE HIGHWAY RECONSTRUCTION TRUST ACCOUNT ON ALL HIGHWAYS MAINTAINED BY THE DEPARTMENT OF HIGHWAYS; AMENDING SECTIONS 60-3-217 AND 60-3-218, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-217, MCA, is amended to read:

"**60-3-217. Expenditures.** The department shall expend the money of the highway reconstruction trust fund account on the federal-aid interstate, primary, and secondary highway systems *and on those highways that*

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it is required to maintain by 60-2-203. If needed, these funds may be apportioned to the various federal-aid systems to match the federal-aid funds available for obligation. **(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)**"

Section 2. Section 60-3-218, MCA, is amended to read:

"**60-3-218. Reconstruction trust program.** (1) Subject to 60-3-217, the department shall administer a program to initiate, plan, design, and carry out reconstruction projects on the primary and secondary systems *and on those highways that it is required to maintain by 60-2-203* to straighten, widen, repair, or preserve existing pavement or make major improvements to existing highways. Funds expended under 60-3-217 may be used for pavement preservation projects on the interstate and primary systems but may not be used for routine repairs. The department shall expend these funds throughout the state according to need, without regard to 60-3-203. Priority must be given to those projects necessitated in whole or in part by the impact of mineral development.

(2) In order to accommodate changes in the financial district structure and implementation of the reconstruction program, the department may suspend the 25% overrun limitation on the allocation of federal-aid primary funds for fiscal years 1984 and 1985. **(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)**"

Approved February 27, 1985.

CHAPTER NO. 40

[HB 107]

AN ACT REVISING THE LAWS GOVERNING THE PRACTICE OF ELECTROLOGY; REQUIRING ELECTROLOGY SCHOOLS AND TEACHERS TO BE LICENSED; GRANTING THE BOARD OF COSMETOLOGISTS AUTHORITY TO ADOPT RULES REGULATING SCHOOLS AND LICENSEES AND TO ADOPT SANITARY STANDARDS; AMENDING SECTIONS 37-32-201, 37-32-301, AND 37-32-304, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-32-201, MCA, is amended to read:

"**37-32-201. Rulemaking power.** *(1)* The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Rules adopted by the board may provide for:

(a) the conduct of board business;

(b) the qualifications, examination, and licensure of applicants to practice or teach electrology;

(c) standards and requirements for licensure of premises to be used for the practice or teaching of electrology;

(d) the curriculum and conduct of schools of electrology;

(e) sanitary standards for licensees, salons, and schools, with particular reference to the precautions necessary to prevent the creation and spread of infectious and contagious diseases; and

(f) the conduct of persons, salons, and schools licensed under this chapter."

Section 2. Section 37-32-301, MCA, is amended to read:

"**37-32-301. License required.** *(1)* No person may represent himself to be an electrologist or engage in the practice *or teaching* of electrology unless he is licensed under this chapter.

(2) Applications for licensure or renewal of a license must be made to the department on forms provided by the department. The application must be accompanied by the appropriate fee."

Section 3. Section 37-32-304, MCA, is amended to read:

"**37-32-304. Electrology salon or school license required.** *(1)* The premises in which an electrologist or electrologists may practice *must* be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

(2) The premises in which electrology is taught must be licensed in accordance with rules adopted by the board pursuant to 37-32-201.

(3) Applications for licensure or renewal under this section must be made to the department on forms provided by the department. Applications must be accompanied by the proper licensure or renewal fee and the inspection fee required by [section 4]."

Section 4. **Inspection.** (1) The department shall appoint inspectors to inspect electrology schools and salons and perform other duties as the department may direct. Inspectors may enter electrology salons and schools during business hours for the purpose of evaluating whether the premises qualify for licensure or otherwise meet standards established by the board.

(2) Upon application for issuance of a license, an electrology salon or school shall pay an inspection fee prescribed by the board.

(3) The board may authorize the department to grant an electrology salon or school, upon payment of an inspection fee, a temporary permit authorizing the electrology establishment to operate for a period of not to exceed 90 days or until an inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board may conduct periodic inspections of electrology salons and schools within this state to determine compliance with this chapter and rules adopted to implement it.

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Section 5. **Refusal, revocation, or suspension of licenses — grounds — notice and hearing.** (1) The board may deny, refuse to renew, revoke, suspend, or take other disciplinary action against a licensee in any of the following cases:

(a) failure of a person, firm, partnership, or corporation operating an electrology salon or school of electrology to comply with this chapter or rules adopted under this chapter;

(b) failure to comply with sanitary rules adopted by the board for the regulation of electrology salons or schools of electrology;

(c) gross malpractice or repeated malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or addiction to any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business;

(g) unprofessional conduct as defined by rules of the board; or

(h) failure to display the license.

(2) Title 2, chapter 4, part 6, applies to all contested cases under this chapter.

Section 6. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Codification instruction.** Sections 4 and 5 are intended to be codified as an integral part of Title 37, chapter 32, and the provisions of Title 37, chapter 32, apply to sections 4 and 5.

Section 8. **Effective dates.** (1) Sections 1 and 6 and this section are effective on passage and approval.

(2) Rules adopted pursuant to sections 1 and 6 may not take effect before October 1, 1985.

Approved February 27, 1985.

CHAPTER NO. 41

[HB 141]

AN ACT TO DELETE THE REQUIREMENT THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES PERFORM SYPHILIS TESTS WITHOUT CHARGE; AMENDING SECTION 50-18-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-18-104, MCA, is amended to read:

"50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

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(2) On request the department shall make laboratory tests required by this chapter.

(3) The department shall destroy the results of a test if an erroneous report is made."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 27, 1985.

CHAPTER NO. 42

[HB 194]

AN ACT TO PROVIDE THAT THE TRUSTEES OF A COUNTY HIGH SCHOOL MAY CALL FOR AN ELECTION ON WHETHER TO ISSUE BONDS FOR A COUNTY HIGH SCHOOL WITHOUT A PETITION CALLING FOR SUCH AN ELECTION; AMENDING SECTION 20-9-452, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-452, MCA, is amended to read:

"20-9-452. Purposes and petition for county high school bonds. (1) Any county where a county high school that has not been placed in a high school district is located may become indebted by the issuance of bonds for the purposes of:

(a) purchasing or erecting a building or buildings for high school purposes;

(b) remodeling, enlarging, or repairing a building or buildings for high school purposes;

(c) purchasing equipment for high school purposes;

(d) purchasing, erecting, or equipping a high school dormitory or gymnasium;

(e) purchasing a suitable site or sites for such high school building; or

(f) refunding or redeeming any outstanding bonds originally issued for any of the foregoing purposes.

(2) In order to initiate any bonding proposition for the above purposes:

(a) the trustees of a county high school may initiate and adopt a resolution in accordance with the provisions of 20-9-422 requesting the board of county commissioners to submit such bond proposition to the qualified electors of the county; or

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(b) a petition signed by not less than 20% of the electors of the county who are qualified under 20-20-301 *may* be presented to the trustees of the county high school. Such petition shall request the submission of a bond proposition to the qualified electors of the county and shall specify the purpose or purposes of the proposed bond issue and the amount of bonds to be issued. Such petition shall conform with the petition requirements prescribed in 20-9-423. If the trustees of the county high school approve a validated petition for a bond proposition, they shall request the board of county commissioners of the county to submit such bond proposition to the qualified electors of the county."

Approved February 27, 1985.

CHAPTER NO. 43

[HB 233]

AN ACT CHANGING THE NAME OF THE BOARD OF VETERINARIANS TO THE BOARD OF VETERINARY MEDICINE; INCLUDING DENTISTRY IN THE DEFINITION OF VETERINARY MEDICINE; CHANGING PROVISIONS RELATING TO EMPLOYMENT OF STUDENTS AS VETERINARIANS' ASSISTANTS; CHANGING THE DEADLINE FOR PAYMENT OF THE FEE FOR RENEWAL OF A VETERINARIAN'S LICENSE; AMENDING SECTIONS 2-15-1852, 37-18-101, 37-18-102, 37-18-104, AND 37-18-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1852, MCA, is amended to read:

"2-15-1852. Board of veterinary medicine. (1) There is a board of *veterinary medicine.*

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of commerce.

(3) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

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(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-18-101, MCA, is amended to read:

"37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of *veterinary medicine* provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Section 3. Section 37-18-102, MCA, is amended to read:

"37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, *or dentistry* on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(3), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104."

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Section 4. Section 37-18-104, MCA, is amended to read:

"37-18-104. Exemptions. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(4) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business."

Section 5. Section 37-18-307, MCA, is amended to read:

"37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before *November* 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board and the presentation of evidence satisfactory to the board that

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the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination shall be granted *a renewal the first year* without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before *November* 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements of all licensees recited above. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before *November* 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department."

Section 6. **Extension of definition.** In any material enacted by the 49th legislature, "board of veterinarians" means "board of veterinary medicine".

Section 7. **Extension of authority.** Any existing authority of the board of veterinarians (herein changed to board of veterinary medicine) to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved February 27, 1985.

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CHAPTER NO. 44

[HB 316]

AN ACT TO RESTRUCTURE THE MEMBERSHIP OF THE RANGELAND RESOURCES COMMITTEE AND TO PROVIDE THAT THE COMMITTEE MAY CONSULT WITH OTHER AGENCIES; AMENDING SECTIONS 2-15-3305 AND 76-14-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3305, MCA, is amended to read:

"2-15-3305. Rangeland resources committee. (1) The governor may select a committee *of 6 members* in accordance with subsection (2) which is composed as follows:

(a) a chairman who is a rancher;

(b) a vice-chairman who is a rancher;

(c) a rancher from the eastern area of the state;

(d) a rancher from the northern area of the state;

(e) a rancher from the area of the state west of the continental divide;

(f) a rancher from the southern area of the state.

(2) The governor shall select the members described in subsections (1)(a) through (1)(f) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 76-14-106, MCA, is amended to read:

"76-14-106. Duties of rangeland resources committee. *(1)* The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

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(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 27, 1985.

CHAPTER NO. 45

[SB 407]

AN ACT PROVIDING THAT TERMINATION, CANCELLATION, NONRENEWAL, OR SUBSTANTIAL ALTERATION OF A FARM IMPLEMENTS DEALERSHIP AGREEMENT BY THE GRANTOR MUST BE FOR GOOD CAUSE AND UPON ADEQUATE NOTICE; DEFINING "GOOD CAUSE"; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(5) "Good cause" means:

(a) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(b) bad faith by the dealer in carrying out the terms of the dealership.

(6) "Grantor" means a person who grants a dealership.

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(7) "Person" means any individual, partnership, association, corporation, or other entity.

Section 2. **Cancellation and alteration of dealerships.** No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

Section 3. **Notice of termination or change in dealership.** (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

Section 4. **Action for damages and injunctive relief.** If any grantor violates [this act], a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved February 28, 1985.

CHAPTER NO. 46

[HB 23]

AN ACT TO REPEAL THE STATUTES AUTHORIZING THE ALLOCATION OF FUNDS TO THE FEDERAL-AID PRIORITY PRIMARY HIGHWAY PROGRAM, THE FEDERAL-AID ECONOMIC GROWTH CENTER HIGHWAY PROGRAM, AND THE FEDERAL-AID SAFER OFF-SYSTEM ROADS PROGRAM; REPEALING SECTIONS 60-3-208, 60-3-221 THROUGH 60-3-225, AND 60-3-231 THROUGH 60-3-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 60-3-208, 60-3-221 through 60-3-225, and 60-3-231 through 60-3-234, MCA, are repealed.

Approved February 28, 1985.

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CHAPTER NO. 47

[HB 140]

AN ACT TO PROVIDE FOR THE PRORATION AND COLLECTION OF TAXES ASSESSED ON A MOBILE HOME OR HOUSETRAILER AFTER THE SECOND PAYMENT DATE FOR SUCH TAXES; AMENDING SECTION 15-24-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-202, MCA, is amended to read:

"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. (1) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206. The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. *Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.*

(2) Tax, *other than the prorated tax described in subsection (1),* due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes and any interest and penalty owed are paid in full. An owner shall then display the sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies to taxable years beginning on or after January 1, 1985.

Approved February 28, 1985.

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CHAPTER NO. 48

[HB 154]

AN ACT TO REPEAL THE MONTANA ECONOMIC LAND DEVELOPMENT ACT; REPEALING SECTIONS 15-24-1301 THROUGH 15-24-1318, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 15-24-1301 through 15-24-1318, MCA, are repealed.

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved February 28, 1985.

CHAPTER NO. 49

[HB 176]

AN ACT TO AUTHORIZE THE PAYMENT OF COSTS AND EXPENSES RELATED TO THE ISSUANCE AND SALE OF TAX AND REVENUE ANTICIPATION NOTES FROM THE PROCEEDS OF SUCH NOTES; AMENDING SECTION 17-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-204, MCA, is amended to read:

"**17-1-204. Payment — pledge of taxes and revenue — costs of issuance.** (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state shall be pledged for the payment of all notes issued under this part.

(3) The department may pay all costs of issuance of notes issued under this part, including without limitation interest, rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the notes, line of credit fees and charges, and all other amounts related to the costs of issuing the notes. Payment of costs must be made from amounts available therefor from the proceeds of the notes upon deposit in the general fund."

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Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 28, 1985.

CHAPTER NO. 50

[HB 267]

AN ACT TO CHANGE THE DATE BY WHICH SCHOOL EQUALIZATION MILL LEVY SURPLUSES ARE TO BE REMITTED TO THE STATE FROM JUNE 1 TO JUNE 20 OF THE FISCAL YEAR FOR WHICH THE LEVY HAS BEEN SET; AMENDING SECTIONS 20-9-331 AND 20-9-333, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June *20* of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

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(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(e) any federal or state money, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 2. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June *20* of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 28, 1985.

CHAPTER NO. 51

[HB 297]

AN ACT TO REMOVE THE REQUIREMENT THAT THE ALFALFA LEAF-CUTTING BEE LABORATORY BE LOCATED AT MONTANA STATE UNIVERSITY; AMENDING SECTION 80-6-1106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-1106, MCA, is amended to read:

"80-6-1106. Bee laboratory authorized. The department or its agent may develop and maintain a laboratory for the purpose of providing disease and parasite analytical services required to carry out the provisions of this part. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee-for-service basis."

Approved February 28, 1985.

CHAPTER NO. 52

[HB 459]

AN ACT REVISING THE LIVESTOCK MARKETING LAWS RELATIVE TO LICENSE AND BOND REQUIREMENTS OF BROKERS AND DEALERS, PAYMENTS FOR LIVESTOCK, AND JURISDICTION OF JUSTICES' COURTS OVER VIOLATIONS OF LIVESTOCK MARKETING LAWS; AMENDING SECTIONS 3-10-303, 81-8-213, 81-8-216, 81-8-231, 81-8-233 THROUGH 81-8-236, 81-8-271 THROUGH 81-8-274, AND 81-8-276 THROUGH 81-8-279, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

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(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment;

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine only not exceeding $1,500;

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings;

(5) jurisdiction of all violations of Title 61, chapter 10; *and*

(6) all misdemeanor violations of Title 81, chapter 8, part 2."

Section 2. Section 81-8-213, MCA, is amended to read:

"81-8-213. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(4) "Livestock dealer" means a *person engaged in the* business *of buying or selling livestock.* It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raiscd or kept thereon for the grazing season or for fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(6) "Person" means an individual, firm, association, partnership, or corporation.

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(7) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock."

Section 3. Section 81-8-216, MCA, is amended to read:

"81-8-216. Penalties. *(1)* A person who violates any provision of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted *to implement those sections* shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

(2) Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 4. Section 81-8-231, MCA, is amended to read:

"81-8-231. Duties of department. The department shall:

(1) supervise and regulate livestock markets and livestock dealers in this state;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe by general order or otherwise rules in conformity with this part applicable to all livestock markets or livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce this part and adopt rules necessary to carry out this part."

Section 5. Section 81-8-233, MCA, is amended to read:

"81-8-233. Title warranty of livestock sold. A livestock market or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the market at the time of the sale."

Section 6. Section 81-8-234, MCA, is amended to read:

"81-8-234. Financial responsibility. (1) Every livestock market or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

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(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument."

Section 7. Section 81-8-235, MCA, is amended to read:

"81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) *A person, whether or not licensed under this part, who issues or delivers a check or other order upon a real or fictitious depository in payment for a livestock purchase knowing that it will not be paid by the depository is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both. If the person has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew it would not be paid by the depository.*"

Section 8. Section 81-8-236, MCA, is amended to read:

"81-8-236. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by this part may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market or livestock dealer as defined in 81-8-213 without the license or certificate and bond required by this part. The court shall enjoin the person from further activities as a livestock market operator or livestock dealer until the license or certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in this part."

Section 9. Section 81-8-271, MCA, is amended to read:

"81-8-271. License to operate as livestock dealer — application. (1) No person may operate as a livestock dealer without a license. A person who wishes to operate as a livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the license together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

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(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(d) a detailed financial statement setting forth all assets and liabilities of the applicant pertinent to the business for which the license is sought.

(2) An application fee of $50 must be submitted with each application for a livestock dealer's license. The fee shall be the first annual fee if the license is granted.

(3) A person who purports to act as an agent for a livestock dealer in the purchase or sale of livestock may not engage in such business activities without a livestock dealer's license."

Section 10. Section 81-8-272, MCA, is amended to read:

"**81-8-272. Issuance of livestock dealer's license.** When an applicant has paid the fee and met the requirements of 81-8-271, the department shall issue to the applicant a license which entitles the licensee to *operate as a livestock dealer* for a period of 1 year unless the license is suspended or revoked under this part."

Section 11. Section 81-8-273, MCA, is amended to read:

"**81-8-273. Refusal to issue or renew license.** *(1)* The department shall refuse to issue or renew a license if the applicant:

(a) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(b) is in violation of any of the provisions of this part;

(c) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(d) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(e) is in violation of the rules adopted by the department;

(f) has failed to comply with a lawful order of the department;

(g) has not filed a surety bond in the form and amount required under 81-8-277;

(h) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

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(i) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.; *or*

(j) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States department of agriculture.

(2) An applicant refused a license or license renewal may not apply again for 1 year following refusal unless the department determines that the applicant has met the requirements of this part."

Section 12. Section 81-8-274, MCA, is amended to read:

"81-8-274. Suspension or revocation of license. (1) Whenever the department finds that any livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person.

(2) Before any license issued under this part may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the department to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license."

Section 13. Section 81-8-276, MCA, is amended to read:

"81-8-276. Annual fee and financial statement. Livestock dealers shall pay an annual fee established by the department and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department."

Section 14. Section 81-8-277, MCA, is amended to read:

"81-8-277. Bond requirement. (1) A livestock dealer applying for a license under this part shall maintain a bond in the form and amount set forth in this section. The department may require evidence of the bond to be filed with it.

(2) The amount of the bond shall be set by the department but may not be less than $5,000. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying to the rightful recipient the purchase price of all livestock he purchases for himself or others and on the principal safely keeping and properly disbursing all funds received on behalf of others."

(3) Each bond shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may bring

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an action to recover on the bond. At least 30 days' notice in writing shall be given to the department by any party terminating the bond."

Section 15. Section 81-8-278, MCA, is amended to read:

"**81-8-278. Records.** A livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business."

Section 16. Section 81-8-279, MCA, is amended to read:

"**81-8-279. Penalties.** *(1)* A person who violates any provision of 81-8-271 through 81-8-273 and 81-8-276 through 81-8-278 or rules adopted by the department *to implement those sections* is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 17. **Extension of authority.** Any existing authority of the department of livestock to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 28, 1985.

CHAPTER NO. 53

[SB 122]

AN ACT ADDING PARENTAL UNEMPLOYMENT TO THE ELIGIBILITY CRITERIA FOR AID TO DEPENDENT CHILDREN; PROVIDING GUIDELINES FOR DETERMINING WHETHER A PARENT IS UNEMPLOYED; AMENDING SECTION 53-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-201, MCA, is amended to read:

"**53-4-201. Definitions.** (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, *continued unemployment,* or physical or mental incapacity of a parent and be

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living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children *pursuant to the federal Social Security Act*, including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month. The term shall also include emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 2. **Aid to dependent children — unemployed parent program.** Aid to dependent children shall be granted to or for the care of children who would not otherwise be entitled to such aid because the child is living in the home with both parents.

Section 3. **Extension of authority.** The department may adopt rules to administer this program pursuant to Title IV, section 407, of the federal Social Security Act, as amended. Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53 apply to section 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 11, 1985.

CHAPTER NO. 54

[HB 70]

AN ACT GENERALLY REVISING THE RENTAL REQUIREMENTS FOR STATE AGRICULTURAL LEASES; AUTHORIZING REDUCTION OF CROP SHARE FOR HIGH PRODUCTION COST METHODS; AUTHORIZING ALTERNATIVE RENTAL METHODS WHEN IN THE BEST INTERESTS OF THE STATE; AMENDING SECTION 77-6-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-501, MCA, is amended to read:

"77-6-501. Agricultural leases. (1) As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less

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than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets *or for high production cost methods when these methods would result in more income to the state.* The board may not delegate the authority to approve such special crop share rentals.

(2) *If it is in the best interests of the state,* the department may authorize a lease upon other basis than crop share, but in these cases the rental shall at least equal the value of the usual landlord's share prevailing in the district *under similar circumstances,* and the department shall set forth in the records the conditions of the case and the rental to be charged."

Section 2. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 11, 1985.

CHAPTER NO. 55

[HB 349]

AN ACT TO EXEMPT FROM BONDING AND LICENSURE REQUIREMENTS AS A COMMODITY DEALER ANY PERSON PURCHASING AGRICULTURAL COMMODITIES FROM A LICENSED COMMODITY DEALER OR PURCHASING NOT MORE THAN $30,000 WORTH OF AGRICULTURAL COMMODITIES FROM PRODUCERS DURING A LICENSING YEAR; AMENDING SECTION 80-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging,

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negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities *from a licensed commodity dealer or who does not purchase more than $30,000 worth of agricultural commodities from producers during* a licensing year;

(c) a person who is the producer of agricultural commodities that he actually plants, nurtures, and harvests; or

(d) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(4) "Credit sale contract" means a contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, or price-later contracts.

(5) "Department" means the department of agriculture provided for in 2-15-3001.

(6) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(7) "Director" means the director of the department of agriculture.

(8) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(9) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. 71 through 87) as that act reads on July 1, 1983.

(10) "Inspector" means any person so designated by the director to assist in the administration of parts 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

(11) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results thereof, including the grade of the grain.

(12) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

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(13) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(14) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(15) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(16) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(17) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(18) "Receipt" means a warehouse receipt.

(19) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(20) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(21) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(22) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(23) "Warehouseman" means a person operating or controlling a public warehouse.

(24) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouseman, except scale weight tickets."

Section 2. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 12, 1985.

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CHAPTER NO. 56

[SB 18]

AN ACT TO PROVIDE A TEACHER WITH NOTICE OF INTENT TO RECOMMEND DISMISSAL OF THE TEACHER WHILE UNDER CONTRACT WITH A SCHOOL DISTRICT; TO PROVIDE A TENURE TEACHER WITH NOTICE OF INTENT TO RECOMMEND TERMINATION OF SERVICES; TO PROVIDE FOR A HEARING ON THE RECOMMENDATION BEFORE THE BOARD OF TRUSTEES OF A DISTRICT PRIOR TO THE DISMISSAL OF A TEACHER OR THE TERMINATION OF SERVICES OF A TENURE TEACHER; AMENDING SECTIONS 20-4-204 AND 20-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-204, MCA, is amended to read:

"20-4-204. Termination of tenure teacher services. (1) *(a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:*

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before April 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

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(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal *a* decision *to terminate* to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title."

Section 2. Section 20-4-207, MCA, is amended to read:

"20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal

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a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal."

Approved March 14, 1985.

CHAPTER NO. 57

[SB 114]

AN ACT TO MAKE SCHOOL ELECTION POLL HOURS APPLY TO ELECTIONS FOR OTHER POLITICAL SUBDIVISIONS; AMENDING SECTIONS 13-1-106, 20-20-106, AND 20-20-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections. *(1)* Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

(2) When an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polls shall be opened and closed at the times set for the school election, as provided in 20-20-106."

Section 2. Section 20-20-106, MCA, is amended to read:

"20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 8 a.m.

(2) If the school election is held on the same day as *an* election *held by a* political subdivision *under 13-1-104(3) and at the same polling place,* the polls shall be opened and closed at the times required for *the school* election.

(3) If the school election is held on the same day as a general or primary election, the polls shall be opened and closed at the times required for the general or primary election.

(4) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately."

Section 3. Section 20-20-203, MCA, is amended to read:

"20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

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(a) except as provided in 20-20-106*(3)*, establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before noon;

(b) establish the polling places for such election, using the established polling places for general elections within the district wherever possible;

(c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 14, 1985.

CHAPTER NO. 58

[HB 56]

AN ACT REDUCING THE RECORD RETENTION PERIOD TO 3 YEARS FOR SPECIAL FUEL USERS AND DEALERS; REDUCING THE STATUTE OF LIMITATIONS TO 3 YEARS FOR ASSESSMENT OF DEFICIENCIES IN TAX REPORTED BY SPECIAL FUEL USERS AND DEALERS; AMENDING SECTIONS 15-70-323 AND 15-70-335, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-323, MCA, is amended to read:

"15-70-323. Special fuel dealer's and special fuel user's records. (1) Every special fuel dealer, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep such records, receipts, and invoices and other pertinent papers with respect thereto as the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) Said records, receipts, invoices, and other pertinent papers shall be required to be kept for a period of at least *3* years from the date on which the return to which they relate was required to have been made."

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Section 2. Section 15-70-335, MCA, is amended to read:

"15-70-335. Statute of limitation. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed under 15-70-331 within *3* years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within *3* years after the return is filed, whichever period expires later."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 14, 1985.

CHAPTER NO. 59

[HB 99]

AN ACT ALLOWING A PERSON WITH ENGINEERING TECHNOLOGY TRAINING TO QUALIFY FOR CERTIFICATION AS AN ENGINEER-IN-TRAINING AND AS A PROFESSIONAL ENGINEER; AMENDING SECTIONS 37-67-306 AND 37-67-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-67-307, MCA, is amended to read:

"37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering *or engineering technology* curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of *a* related science curriculum of 4 years or more, other than *engineering or engineering technology*, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified."

Section 2. Section 37-67-306, MCA, is amended to read:

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"37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering *or engineering technology* curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of *a* related science curriculum of 4 years or more, other than *engineering or engineering technology*, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity."

Section 3. **Extension of authority.** Any existing authority of the board of professional engineers and land surveyors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 14, 1985.

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CHAPTER NO. 60

[HB 103]

AN ACT REVISING THE JURISDICTION PROVISIONS OF THE YOUTH COURT ACT; PROVIDING FOR INITIAL JURISDICTION OVER AN ALLEGED DELINQUENT YOUTH IN THE COUNTY WHERE THE YOUTH IS ALLEGED TO HAVE VIOLATED THE LAW; PROVIDING FOR DISTRICT COURT JURISDICTION OVER A YOUTH 12 YEARS OF AGE OR OLDER ALLEGED TO HAVE COMMITTED THE OFFENSE OF SEXUAL INTERCOURSE WITHOUT CONSENT, DELIBERATE HOMICIDE, MITIGATED DELIBERATE HOMICIDE, ATTEMPTED DELIBERATE HOMICIDE, OR ATTEMPTED MITIGATED DELIBERATE HOMICIDE; AMENDING SECTIONS 41-5-201, 41-5-204, AND 41-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-201, MCA, is amended to read:

"**41-5-201. Youth court judge.** (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one *or more* of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule."

Section 2. Section 41-5-204, MCA, is amended to read:

"**41-5-204. Venue and transfer.** (1) The county where a youth is a resident *or is alleged to have violated the law* has initial jurisdiction over any youth alleged to be a delinquent youth. *The youth court shall assume the initial handling of the case.*

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

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(b) the county in which the youth is alleged to have violated the law; *or*

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred."

Section 3. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in *45-5-104*;

(B) arson as defined in 45-6-103;

(C) aggravated assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) sexual intercourse without consent as defined in 45-5-503;

(G) aggravated kidnapping as defined in 45-5-303;

(H) possession of explosives as defined in 45-8-335;

(I) criminal sale of dangerous drugs for profit as included in 45-9-101;

(J) attempt as defined in 45-4-103 of any of the acts enumerated in subsections *(1)(a)(ii)(A)* through *(1)(a)(ii)(I)*;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

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(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and acceptance by the district court judge.

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(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper; *however, no youth under 16 years of age may be confined in the state prison.*"

Approved March 14, 1985.

CHAPTER NO. 61

[HB 119]

AN ACT TO GENERALLY REVISE AND UPDATE THE LAWS RELATING TO TUBERCULOSIS CONTROL; ALLOWING ENFORCEMENT OF TUBERCULOSIS TREATMENT OUTSIDE OF A HOSPITAL; AMENDING SECTIONS 50-17-101 THROUGH 50-17-105, 50-17-107, 50-17-108, 50-17-110, 50-17-112, AND 50-17-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-17-101, MCA, is amended to read:

"**50-17-101. Policy of state.** It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives."

Section 2. Section 50-17-102, MCA, is amended to read:

"**50-17-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Local board" means a city, county, city-county, or district board of health.

(3) "Tuberculosis" means a disease caused by *mycobacterium tuberculosis.*

(4) "Approved course of treatment" means a course of treatment for tuberculosis which includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to assure public health and safety as set out in the rules of the department."

Section 3. Section 50-17-103, MCA, is amended to read:

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"50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination *and control* of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds."

Section 4. Section 50-17-104, MCA, is amended to read:

"50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) The Montana state hospital shall maintain facilities *for inhospital treatment of tuberculosis.*

(2) The charge for care, treatment, and maintenance at the Montana state hospital shall be at the rate fixed by law."

Section 5. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis *and, if he is found to have tuberculosis, to complete an approved course of treatment*; or

(b) enter or return to a hospital for treatment *or follow an approved course of treatment outside of a hospital.*

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis or has been exposed to tuberculosis and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) *has* tuberculosis and has refused to *be treated or to complete an approved course of treatment.*

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness *must* be a physician."

Section 6. Section 50-17-107, MCA, is amended to read:

"50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

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(1) true and order the person *to enter or return* to a hospital *for treatment or to follow an approved course of treatment outside of a hospital*;

(2) true and order the person to submit to an examination for tuberculosis *within a specified time and to complete an approved course of treatment*; or

(3) not true and order the person discharged."

Section 7. Section 50-17-108, MCA, is amended to read:

"50-17-108. Commitment to hospital on noncompliance with order. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set *or to complete an approved course of treatment*, the court shall order him committed to a hospital."

Section 8. Section 50-17-110, MCA, is amended to read:

"50-17-110. Confinement in hospital — submission to treatment. *(1)* A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged *under 50-17-112 or 50-17-113*, but he is not required to submit to medical or surgical treatment without *his* written consent, *the consent of his next of kin or guardian if* the person is incompetent, *or the consent of his parent or guardian if the* person is a minor.

(2) The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital."

Section 9. Section 50-17-112, MCA, is amended to read:

"50-17-112. Procedure to obtain release from commitment. (1) *One hundred and eighty days or more after the date of his commitment, a* person committed under 50-17-107 or 50-17-108 may apply *to the court that ordered his commitment* for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court *shall hold* a hearing.

(3) Following the hearing, the court *shall*:

(a) *order* his discharge if it finds he *has completed an approved course of treatment or does not have tuberculosis;* or

(b) *dismiss* the request if it finds he still has tuberculosis *or he has refused to submit to an examination to determine whether he has tuberculosis or has not yet completed an approved course of treatment.*"

Section 10. Section 50-17-113, MCA, is amended to read:

"50-17-113. Voluntary release. *(1)* If the person in charge of the hospital and the department or local board that requested commitment concur that a person *either does not have tuberculosis or has submitted to an approved course of treatment*, the person shall be released from the hospital.

(2) The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment."

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Section 11. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved March 14, 1985.

CHAPTER NO. 62

[SB 7]

AN ACT TO AUTHORIZE SECURITIES OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION TO BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS; AMENDING SECTION 17-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; *and*

(j) federal home loan mortgage corporation;

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable for such revenues during the outstanding term of such bonds;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(11) bonds issued pursuant to Title 7, chapter 12, parts 21 and 41;

(12) bonds issued pursuant to Title 90, chapter 6, part 1;

(13) revenue bonds issued by any unit of the university system of the state of Montana; and

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(14) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 15, 1985.

CHAPTER NO. 63

[SB 8]

AN ACT PROVIDING REPRESENTATION FROM THE RETIREMENT SYSTEMS ON THE BOARD OF INVESTMENTS; AMENDING SECTION 2-15-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1005, MCA, is amended to read:

"2-15-1005. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes only as prescribed in 2-15-121. Personnel for the board shall be appointed by the department subject to the approval of the board, except that the board may employ an investment officer and assistant investment officer who will have general responsibility for management of the board's staff and directing investment activity. The investment officer and assistant investment officer serve at the pleasure of the board, and the board may prescribe the duties and annual salary of both.

(3) The board is composed of *seven* members, appointed by the governor as prescribed in 2-15-124.

(a) The governor shall appoint five members who are informed and experienced in the subject of investments.

(b) The governor shall appoint one member from the public employees' retirement board provided for in 2-15-1009 and one member from the teachers' retirement board provided for in 2-15-1010.

(c) If a member appointed to the board of investments under subsection (3)(b) ceases to be a member of the retirement board, a vacancy is created on the board of investments, which the governor shall fill, in accordance with 2-15-124, from the members of the retirement board concerned.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

Section 2. **Terms of initial appointees — successors.** (1) The provisions of 2-15-124 notwithstanding:

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(a) the member of the public employees' retirement board initially appointed by the governor on or after [the effective date of this act] shall serve on the board of investments until January 1, 1989, and until a successor is appointed; and

(b) the member of the teachers' retirement board initially appointed by the governor on or after [the effective date of this act] shall serve on the board of investments until January 1, 1987, and until a successor is appointed.

(2) At the completion of each of the initial terms provided for in subsection (1), the governor shall appoint a successor from the concerned retirement board for a term in accordance with 2-15-124.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1985.

CHAPTER NO. 64

[SB 14]

AN ACT TO RESTRICT FREE LEGISLATIVE PROCEEDINGS FOR NEWS MEDIA TO MONTANA NEWSPAPERS AND BROADCASTERS; AMENDING SECTION 5-11-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-213, MCA, is amended to read:

"**5-11-213. Exclusions.** *Each* general circulation *newspaper published in Montana and each* radio *or* television *station broadcasting in Montana that has* registered with the secretary of state *is* exempt from 5-11-212 and shall receive one complete set of the *legislative* proceedings *for the ensuing biennium* without charge."

Approved March 15, 1985.

CHAPTER NO. 65

[SB 59]

AN ACT PRESCRIBING STANDARDS OF ACCESSIBILITY TO PUBLIC BUILDINGS FOR HANDICAPPED PERSONS; AMENDING SECTION 50-60-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-201, MCA, is amended to read:

"**50-60-201. Purpose of state building code.** The state building code shall be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

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(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that *any new* buildings constructed with public funds are accessible to and functional for physically handicapped persons *according to the principles applicable to accessibility to public buildings for handicapped persons adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles*;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy."

Approved March 15, 1985.

CHAPTER NO. 66

[HB 125]

AN ACT REQUIRING THAT WITNESS AND JUROR FEES BE PAID FROM A COUNTY'S DISTRICT COURT FUND IF THE COUNTY HAS SUCH A FUND; AMENDING SECTIONS 3-5-511, 3-15-204, 3-15-205, AND 46-11-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

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(2) At the time any witness is excused from further attendance, the clerk must give to the witness a warrant taken from a book containing a carbon copy of the same, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund *unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund.*"

Section 2. Section 3-15-204, MCA, is amended to read:

"**3-15-204. Duties of clerk as to jurors.** (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a warrant signed by himself, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund *unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund.*

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

Section 3. Section 3-15-205, MCA, is amended to read:

"**3-15-205. Costs of impaneling jury after settlement reached.** In any civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county general fund *unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in such fund.*"

Section 4. Section 46-11-319, MCA, is amended to read:

"**46-11-319. Expenses of grand jury.** *(1)* All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county, *except as provided in subsection (2),* upon warrants drawn by the county auditor or the

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clerk of the district court upon the written order of the judge of the district court of the county.

(2) If a county has a district court fund, all expenses of a grand jury must be paid out of such fund."

Section 5. **Effective date.** This act is effective July 1, 1985.

Approved March 15, 1985.

CHAPTER NO. 67

[HB 128]

AN ACT TO AUTHORIZE A CITY OR TOWN COUNCIL OR OTHER LEGISLATIVE BODY CREATING A BOARD OF ADJUSTMENT TO SPECIFY THE TERM OF APPOINTMENT OF BOARD MEMBERS; AMENDING SECTION 76-2-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-322, MCA, is amended to read:

"**76-2-322. Membership and term of board members — vacancies.** (1) The board of adjustment shall consist of five members to be appointed for a term *to be specified by the city or town council or other legislative body or, if no term is specified, then for a term* of 3 years. *A member is* removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant."

Approved March 15, 1985.

CHAPTER NO. 68

[HB 134]

AN ACT REQUIRING PUBLICATION OF "FIRE CODES OF MONTANA" IN LOOSELEAF FORM AND PUBLICATION OF REPLACEMENT PAGES AFTER AMENDMENT; AMENDING SECTION 2-15-2011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2011, MCA, is amended to read:

"**2-15-2011. Distribution of fire code.** (1) *The* department of justice shall compile, index, and publish all Montana statutes relating to fire

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protection *under the title* "Fire Codes of Montana" *in looseleaf pages to be inserted in a ringbinder. Within* 90 days after the close of any regular legislative session in which an act relating to fire protection is adopted, *the department shall publish replacement looseleaf pages required to update "Fire Codes of Montana" in accordance with the amendments or additions enacted.*

(2) *A* copy of *"Fire Codes of Montana"*, as amended, shall be mailed to each fire and sheriff department within Montana without charge. The department of justice shall make copies of *"Fire Codes of Montana"* and subsequent *looseleaf replacement pages* available to the public."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1985.

CHAPTER NO. 69

[HB 139]

AN ACT TO TRANSFER RESPONSIBILITY FOR CAPITOL GROUNDS MAINTENANCE FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTION 2-17-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-111, MCA, is amended to read:

"2-17-111. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property in the state capitol area.

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings *and* equipment in the capitol area. The department shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings *and* equipment in the capitol area.

(3) No state agency may alter, improve, repair, or remodel a state building in the capitol area without the approval of the department.

(4) It is the duty of the department of fish, wildlife, and parks to maintain the grounds in the state capitol area."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 15, 1985.

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CHAPTER NO. 70

[HB 144]

AN ACT TO PROVIDE THAT AT LEAST ONE-HALF OF ANY HIGH SCHOOL TUITION OBLIGATIONS FOR PUPILS ATTENDING HIGH SCHOOL OUTSIDE THE COUNTY OF RESIDENCE BE PAID BY JUNE 15 OF THE SCHOOL FISCAL YEAR; AMENDING SECTION 20-5-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-312, MCA, is amended to read:

"20-5-312. Reporting, budgeting, and payment for high school tuition. (1) At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(3) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(4) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

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(5) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant *of at least one-half* of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. *The remaining obligations must be paid by June 15 of the school fiscal year.* The *payments* shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(6) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 15, 1985.

CHAPTER NO. 71

[HB 169]

AN ACT EXTENDING HANDICAPPED PERSONS' SPECIAL PARKING PRIVILEGES TO 100 PERCENT DISABLED VETERANS; AMENDING SECTION 49-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special parking privilege.** A vehicle lawfully displaying specially inscribed license plates issued under 10-2-301 and conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under 49-4-302.

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Section 2. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person *or one displaying a specially inscribed license plate issued under 10-2-301 and conveying a 100% disabled veteran* may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part *and vehicles lawfully displaying specially inscribed license plates issued under 10-2-301* and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic."

Approved March 15, 1985.

CHAPTER NO. 72

[HB 182]

AN ACT TO DELETE THE REQUIREMENTS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MUST APPROVE A LABORATORY THAT PERFORMS A BLOOD GROUP TEST AS PART OF A PRENATAL SEROLOGICAL TEST AND THAT THE DEPARTMENT LABORATORY MUST PERFORM BLOOD GROUP TESTS; AMENDING SECTION 50-19-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-19-104, MCA, is amended to read:

"50-19-104. Approved laboratory to perform syphilis and rubella immunity tests. (1) The tests *for syphilis and rubella immunity must* be done by the laboratory of the department, a laboratory approved by the department, *any* other state *laboratory, or a* United States public health service or armed forces laboratory.

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(2) *The department may establish a* reasonable fee for the *tests done* by the department *laboratory.*"

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1985.

CHAPTER NO. 73

[HB 232]

AN ACT CHANGING THE TIME FOR ELECTION OF WATER AND SEWER DISTRICT COMMISSIONERS; AMENDING SECTIONS 7-13-2234 AND 7-13-2236, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2234, MCA, is amended to read:

"**7-13-2234. Term of office.** (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) Except as otherwise provided, the term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district.

(5) The first regular election for a district shall be held *on the next regular school election day held in accordance with 20-3-304* following the formation of the district."

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Section 2. Section 7-13-2236, MCA, is amended to read:

"7-13-2236. General district election. *Elections* of directors of the district shall be held *each odd-numbered year at the regular school election day held in accordance with 20-3-304.*"

Section 3. **Coordination.** If Senate Bill No. 169 is passed and approved, this act is void.

Approved March 15, 1985.

CHAPTER NO. 74

[HB 246]

AN ACT PERMITTING THE SEIZURE OF A DRIVER'S LICENSE BY THE COURT ON CONVICTION REQUIRING MANDATORY SUSPENSION; AMENDING SECTION 61-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the *suspension or* revocation of the operator's or chauffeur's license of such person by the division, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the division and at the same time forward a record of such conviction to the division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the division.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the division a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 61-5-208(2) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise

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limiting a license to drive shall report any such action and the adjudication upon which it is based to the division within 5 days on forms furnished by the division."

Approved March 15, 1985.

CHAPTER NO. 75

[HB 321]

AN ACT TO REVISE THE DEFINITION OF DEMAND AND TIME DEPOSITS IN BANKS; REDUCING THE TIME WITHIN WHICH SUCH DEPOSITS ARE PAYABLE; AMENDING SECTIONS 32-1-109 AND 32-1-445, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-445, MCA, is amended to read:

"32-1-445. Demand or time deposits. Demand deposits, within the meaning of this chapter, shall comprise all deposits payable within 7 days, and time deposits shall comprise all deposits payable after 7 days and all savings accounts and certificates of deposit which are subject to not less than 7 days' notice before payment."

Section 2. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. Unless the context requires otherwise the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

(2) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(3) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(4) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(7) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

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(8) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(9) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(10) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 3. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1985.

CHAPTER NO. 76

[HB 372]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAW PERTAINING TO CONSERVATION DISTRICTS; AMENDING SECTIONS 76-15-201, 76-15-301 THROUGH 76-15-303, 76-15-502, 76-15-710, AND 76-15-721, MCA; REPEALING SECTION 76-15-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-201, MCA, is amended to read:

"76-15-201. Petition to create conservation district. (1) Any *10% of the* qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition shall set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

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(d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions."

Section 2. Section 76-15-301, MCA, is amended to read:

"76-15-301. Establishment and reorganization of supervisor areas. (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. *If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county.* If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the board may reorganize the district into seven supervisor areas."

Section 3. Section 76-15-302, MCA, is amended to read:

"76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than *twice the number of* candidates are nominated *than the number to be elected at the general election*, the registrar shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election."

Section 4. Section 76-15-303, MCA, is amended to read:

"76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The *candidate or, if more than one supervisor position is to be filled by the general election, the* candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of *the* individuals nominated shall be printed, arranged in a rotating order of the surnames, as provided under 13-12-205, upon ballots, with a square before each name and a direction to

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insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain registered electors prior to each general election and each primary election, *if necessary*. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13."

Section 5. Section 76-15-502, MCA, is amended to read:

"76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section *and* 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period."

Section 6. Section 76-15-710, MCA, is amended to read:

"76-15-710. Court procedure after petition is filed. (1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of *10%* a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter

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judgment for the amount of such costs and expenses, with interest at the rate of *10%* a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court."

Section 7. Section 76-15-721, MCA, is amended to read:

"76-15-721. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment shall consist of three members, each to be appointed for a term of 3 years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment shall be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment shall receive compensation for their services at the rate of *$25* per day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board."

Section 8. **Repealer.** Section 76-15-504, MCA, is repealed.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1985.

CHAPTER NO. 77

[HB 595]

AN ACT AMENDING SECTION 53-6-101, MCA, TO INCLUDE LICENSED SOCIAL WORKERS AS PERMISSIBLE PROVIDERS OF MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-101, MCA, is amended to read:

"53-6-101. Definition of medical assistance. (1) The definition of medical assistance shall include:

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(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere.

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) services provided by social workers licensed under Title 37, chapter 22;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) any additional medical service or aid allowable under or provided by the federal Social Security Act."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 15, 1985.

CHAPTER NO. 78

[SB 1]

AN ACT SPECIFYING ALLOWABLE USES OF COUNTY LAND PLANNING FUNDS; AMENDING SECTION 90-1-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-108, MCA, is amended to read:

"90-1-108. County land planning assistance. (1) The department of commerce shall annually distribute the funds appropriated to it from the

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county land planning account. Each county shall be allotted $3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use such funds for land planning purposes, *which include but are not limited to comprehensive planning, economic development planning, and capital improvements planning.*

(3) At the end of each fiscal year, every local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of commerce. *Surplus funds may be accumulated and rebudgeted for the purposes stated in subsection (2), except that funds rebudgeted by a local governing body or planning agency may not exceed the total revenue received under subsection (1) in the year immediately prior to the budget year.* Any *excess* funds shall revert to the education trust fund account *at the end of each odd-numbered fiscal year, beginning in June 1987.*"

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 18, 1985.

CHAPTER NO. 79

[SB 5]

AN ACT TO PROVIDE FOR LEGAL EFFECT WHENEVER A PROVISION OF LAW IS NOT CODIFIED IN THE MONTANA CODE ANNOTATED BECAUSE IT IS REDUNDANT WITH A CODIFIED PROVISION AND THE CODIFIED PROVISION IS SUBSEQUENTLY AMENDED, REPEALED, OR DELETED; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Provisions of law not codified in Montana Code Annotated because redundant.** (1) Whenever a provision of law codified in the Montana Code Annotated is amended in such a way that it conflicts with a provision of law that was not codified in the Montana Code Annotated because such uncodified provision was redundant with such codified provision, the codified provision, as amended, governs and must be given effect over the uncodified provision.

(2) Repeal or deletion of a provision of the Montana Code Annotated also repeals or deletes a provision of law that was not codified in the Montana Code Annotated because it was redundant with the repealed or deleted

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provision of the Montana Code Annotated, whether or not the repealed or deleted provision of the Montana Code Annotated was amended prior to its repeal or deletion.

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to amendments, repeals, and deletions occurring after January 9, 1979.

Approved March 18, 1985.

CHAPTER NO. 80

[SB 6]

AN ACT TO GENERALLY REVISE TITLE 30, CHAPTERS 8 AND 9, OF MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE TO CONFORM WITH THE INTENT OF CHAPTER 402, LAWS OF 1983, WHICH SUBSTANTIALLY ADOPTED THE 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW COMMISSIONERS; AMENDING SECTIONS 30-8-202, 30-8-205, 30-8-207, 30-8-309, 30-8-313, 30-8-319, 30-8-405, 30-9-312, AND 30-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICATION TO THE EFFECTIVE DATE OF CHAPTER 402, LAWS OF 1983.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-8-202, MCA, is amended to read:

"30-8-202. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the *registered owner or* registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has

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been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser *if he is* without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unauthorized signatures (30-8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed."

Section 2. Section 30-8-205, MCA, is amended to read:

"30-8-205. Effect of unauthorized signature on certificated security or initial transaction statement. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom *the* initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, *or of initial transaction statements* or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement."

Section 3. Section 30-8-207, MCA, is amended to read:

"30-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees. (1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

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(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, *to* receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to *the* due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under *subsection* (4)(b) or by registration of release and pledge under *subsection* (4)(c), if the security *interest* is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like."

Section 4. Section 30-8-309, MCA, is amended to read:

"30-8-309. Effect of endorsement without delivery. An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the *certificated* security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security."

Section 5. Section 30-8-313, MCA, is amended to read:

"30-8-313. When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary".

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(1) Transfer of a security or limited interest (including a security interest) therein to a purchaser occurs only:

(a) at the time he or a person designated by him acquires possession of a certificated security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under 30-8-320;

(h) with respect to the transfer of a security interest *where* the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

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(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest *where* the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest *where* the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under (a), (b), (c), (d), or (g) of subsection (1), at the time the transferor has signed a security agreement containing a description of the security and value is given by *the* secured party.

(2) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in (c), (d)(i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer."

Section 6. Section 30-8-319, MCA, is amended to read:

"30-8-319. Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

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(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under *subsection (1)* has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price."

Section 7. Section 30-8-405, MCA, is amended to read:

"30-8-405. Lost, destroyed, and stolen certificated securities. (1) If a *certificated* security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under 30-8-404 or any claim to a new security under this section.

(2) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by 30-8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof."

Section 8. Section 30-9-312, MCA, is amended to read:

"30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this part and in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and 30-9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the

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extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing *or perfection* as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 30-8-321 on securities, the security

interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 9. Section 30-9-318, MCA, is amended to read:

"30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is *ineffective* if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest."

Section 10. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively to October 1, 1983, the effective date of Chapter 402, Laws of 1983.

Approved March 18, 1985.

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CHAPTER NO. 81

[SB 24]

AN ACT TO CLARIFY LIMITATIONS ON PERMISSIBLE SUBJECT MATTER OF STATE-TRIBAL COOPERATIVE AGREEMENTS; AMENDING SECTION 18-11-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-11-110, MCA, is amended to read:

"18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) *is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.*

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; *or*

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws."

Approved March 18, 1985.

CHAPTER NO. 82

[SB 39]

AN ACT ALLOWING AN ALL-BEVERAGES LICENSEE WHO HAS A SECURITY INTEREST IN ANOTHER ALL-BEVERAGES LICENSE TO OBTAIN TEMPORARY OWNERSHIP OF THE OTHER LICENSE ON DEFAULT; AMENDING SECTION 16-4-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-205, MCA, is amended to read:

"16-4-205. Limit one license to person — business in name of licensee. No person shall be *issued* more than one all-beverages license in any year, *with the exception of a secured party issued an additional all-beverages license as the result of a default. Such a secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance.* No business may be carried on under any license issued under this chapter except in the name of the licensee."

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Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 18, 1985.

CHAPTER NO. 83

[SB 40]

AN ACT ALLOWING THE FORFEITURE OF SEIZED RESALABLE ALCOHOLIC BEVERAGES THROUGH ADMINISTRATIVE PROCEDURES; REQUIRING THE DEPARTMENT OF REVENUE TO DESTROY SEIZED ALCOHOLIC BEVERAGES UNSUITABLE FOR RESALE; AMENDING SECTIONS 16-6-106 AND 16-6-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-6-106, MCA, is amended to read:

"16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing. (1) Where alcoholic beverage is found by any investigator or peace officer on any premises or in any place in such quantities as to satisfy the investigator or peace officer that such alcoholic beverage is being had or kept contrary to any of the provisions of this code, it shall be lawful for the investigator or peace officer to forthwith seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was had or kept and immediately turn *the* alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale. When the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The *notice must* show the date and place of seizure, the name of the person or persons actually or apparently in possession or control *of the alcoholic beverage* if such person *was* present at the time of the seizure, *and* the reasons the department claims the right to the possession of the alcoholic beverage. *The notice must also* demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the *hearing examiner* declare the alcoholic beverage contraband, and that the *hearing examiner* order the alcoholic beverage be forfeited to the state of Montana."

Section 2. Section 16-6-107, MCA, is amended to read:

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"16-6-107. Disposal of forfeited alcoholic beverages — report. (1) In every case in which a court *or hearing examiner* makes any order for the forfeiture of alcoholic beverages under any of the provisions of this code and in every case in which any claimant to an alcoholic beverage under the provisions of 16-6-105 *or 16-6-106* fails to establish his claim and right thereto, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept shall be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage which is found to be suitable for sale in the state liquor stores and shall pay the amount so determined to the state treasurer after deducting therefrom the expenses necessarily incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouses. The alcoholic beverage suitable for sale shall be taken into stock by the department and sold under the provisions of this code. *All* alcoholic *beverages* found to be unsuitable for sale in state liquor stores shall be destroyed by the department.

(2) In every case in which an alcoholic beverage is seized by a peace officer, it shall be his duty to make or cause to be made to the department a report in writing of the particulars of such seizure."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 18, 1985.

CHAPTER NO. 84

[SB 78]

AN ACT TO EXEMPT FIRE DEPARTMENT RELIEF ASSOCIATIONS HAVING ANNUAL RECEIPTS OF LESS THAN $20,000 FROM AUDIT BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 2-7-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

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(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6); and

(h) fire department relief associations, *except as provided in subsection (6).*

(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

(6) *(a)* Except as herein provided, the department may not audit:

(i) a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33; *or*

(ii) a fire department relief association organized under Title 19, chapter 11, which has annual receipts, including earnings on invested funds, of less than $20,000, except for audits as provided under 19-11-206.

(b) Such *fire* district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees. The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.

(c) Such fire department relief association shall annually file with the municipality in which the fire department relief association is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the fire department relief association trustees. The municipality may require an annual audit to be conducted by the department if it considers such audit to be in the public interest."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1985.

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CHAPTER NO. 85

[SB 87]

AN ACT TO CLARIFY THE LIABILITIES OF GENERAL PARTNERS IN A LIMITED PARTNERSHIP AND OF PERSONS WHO ERRONEOUSLY BELIEVE THEY ARE LIMITED PARTNERS IN A LIMITED PARTNERSHIP; AMENDING SECTIONS 35-12-704 AND 35-12-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-12-704, MCA, is amended to read:

"35-12-704. Person erroneously believing himself a limited partner. (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise *by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.*

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate if any is filed to show the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction."

Section 2. Section 35-12-803, MCA, is amended to read:

"35-12-803. General powers and liabilities. *(1)* Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement,

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a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners."

Approved March 18, 1985.

CHAPTER NO. 86

[SB 115]

AN ACT REMOVING THE MANDATORY AND COMPULSORY RETIREMENT AGE PROVISIONS FROM THE PUBLIC LAW ENFORCEMENT AND THE MONTANA FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; CLARIFYING THE RETIREMENT DATE FOR THE FIREFIGHTERS' SYSTEM; AMENDING SECTIONS 19-6-101, 19-7-501, 19-8-601, 19-9-104, 19-9-801, 19-9-802, 19-9-804, 19-10-401, 19-10-403, 19-10-501, 19-13-701, AND 19-13-704, MCA; REPEALING SECTIONS 19-6-504, 19-9-803, 19-13-702, AND 19-13-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement pension trust fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Department" means the public employees' retirement division of the department of administration.

(7) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to

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an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member" means a person who has accumulated deductions in the account standing to his credit.

(9) "Member's annuity" means payments for life derived from contributions made by the member.

(10) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(11) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 2. Section 19-7-501, MCA, is amended to read:

"19-7-501. Eligibility and application for service retirement — commencement of allowance. (1) A sheriff in service who has completed at least 25 years of service and who has reached the age of 55 years may retire on a service retirement allowance upon written application to the board, submitted not less than 30 days or more than 90 days from the desired date of retirement.

(2) The retirement allowance must commence on the first day of the month following the member's last day of membership service."

Section 3. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement — commencement of allowance. (1) Any member in service who has completed at least 20 years of creditable service and who has reached the age of 55 years may retire on service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

Section 4. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

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(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(6) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(7) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(8) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(9) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(11) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Member's annuity" means monthly payments for life derived from member contributions.

(13) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(14) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(15) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(16) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for

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urban law enforcement services, or the entire county included in the county-municipal consolidation.

(17) "Plan" means the municipal police officers' retirement system created by this chapter.

(18) "Police officer" means a law enforcement officer employed by an employer.

(19) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(20) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(21) "Retirement allowance" means the employer annuity plus the member's annuity.

(22) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(23) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(24) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 5. Section 19-9-801, MCA, is amended to read:

"19-9-801. Eligibility for service retirement — commencement of allowance. Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(3) The retirement allowance must commence on the first day of the month following the member's last day of membership service."

Section 6. Section 19-9-802, MCA, is amended to read:

"19-9-802. Election to serve additional years. (1) A police officer who is eligible for service retirement under 19-9-801(1) or (2) may retire as

of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-9-801(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1%, as prescribed in 19-9-804(2), for each such year."

Section 7. Section 19-9-804, MCA, is amended to read:

"19-9-804. Amount of retirement allowance. (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary."

Section 8. Section 19-10-401, MCA, is amended to read:

"19-10-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and shall retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank."

Section 9. Section 19-10-403, MCA, is amended to read:

"19-10-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under subsection (1) or (2) of 19-10-401 may transfer, as of the time he becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-10-401(2) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday, and he shall be paid the additional 1% for each such year."

Section 10. Section 19-10-501, MCA, is amended to read:

"19-10-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, he shall thereafter receive monthly payments from the city's police retirement fund, as follows:

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(1) A police officer who is eligible under 19-10-401(1) or (2) and does not elect to serve any additional years as an active police officer shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years shall receive the payment provided for in subsection (1) plus an additional 1% of such payment per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service."

Section 11. Section 19-13-701, MCA, is amended to read:

"19-13-701. Eligibility for service retirement — commencement of allowance. (1) *A* member who has reached age 50 and has completed 10 years or more in the aggregate as a firefighter in any capacity or rank *is eligible for service* retirement *commencing* on the first day of the month following the member's last day of membership service.

(2) A member who terminates active service before age 50 and keeps his contributions on deposit under 19-13-304 is eligible for service retirement commencing on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50."

Section 12. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of retirement allowance. (1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or if the surviving spouse dies or remarries and if the firefighter leaves one or more dependent children,

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the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service."

Section 13. **Repealer.** Sections 19-6-504, 19-9-803, 19-13-702, and 19-13-703, MCA, are repealed.

Section 14. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1985.

CHAPTER NO. 87

[SB 120]

AN ACT TO REMOVE THE RESTRICTION ON SUBMITTING BIDS BY PUBLIC CONTRACTORS WHEN WORKING BEYOND CONTRACT TIME; AMENDING SECTIONS 37-71-203 AND 60-2-112, MCA; REPEALING SECTION 18-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-71-203, MCA, is amended to read:

"**37-71-203. Bids to show bidder is licensed.** All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as herein provided."

Section 2. Section 60-2-112, MCA, is amended to read:

"**60-2-112. Competitive bidding.** (1) When the estimated cost of any work exceeds $10,000, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

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(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission must specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total cost of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project."

Section 3. **Repealer.** Section 18-2-311, MCA, is repealed.

Section 4. **Extension of authority.** Any existing authority of the departments of administration, commerce, or highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1985.

CHAPTER NO. 88

[SB 124]

AN ACT TO REVISE AND CLARIFY THE REVIEW AND PROCESSING OF UNLIQUIDATED CLAIMS AGAINST THE STATE; AMENDING SECTION 17-8-202, MCA; AND REPEALING SECTIONS 17-8-221 THROUGH 17-8-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-202, MCA, is amended to read:

"17-8-202. Preaudit and transmittal of claims. (1) The department of administration is not required to preaudit a liquidated claim against the state. However, all state agencies shall submit copies of all claims to the department of administration which may preaudit those claims it considers necessary. The agency shall retain the original of all documents sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature."

Section 2. **Repealer.** Sections 17-8-221 through 17-8-226, MCA, are repealed.

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Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 18, 1985.

CHAPTER NO. 89

[SB 139]

AN ACT ALLOWING A SELLER WHO IS SUBJECT TO FEDERAL DISCLOSURE REQUIREMENTS THE OPTION OF INCLUDING THE DISCLOSURE LANGUAGE OF SECTION 31-1-231, MCA, IN THE RETAIL INSTALLMENT CONTRACT; AMENDING SECTION 31-1-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-231, MCA, is amended to read:

"**31-1-231. Requirements of retail installment contracts.** (1) Each retail installment contract shall be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the

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buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (a) and (b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (c), (d), and (e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (f) and (g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in (5) need not be stated in the sequence or order set forth and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act (15 U.S.C. 1601-1667e), the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all such

requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section."

Approved March 18, 1985.

CHAPTER NO. 90

[SB 143]

AN ACT AMENDING THE DEVELOPMENT CORPORATION ACT TO CHANGE THE LIMIT ON LOANS MADE TO THE CORPORATION BY FINANCIAL INSTITUTIONS; AMENDING SECTION 32-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-4-302, MCA, is amended to read:

"32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member:

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(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) ¼ *of* 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) The board of directors, on the request of any financial institution applying for membership and with the approval of one-half of the members that are the same type of financial institution as the applicant, may authorize a different loan limit than that set forth in subsection (3)(b).

(5) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(6) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of not less than ¼ of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the time."

Approved March 18, 1985.

CHAPTER NO. 91

[HB 98]

AN ACT TO PERMIT A PRESIDENT OF A UNIVERSITY UNIT TO ASSESS FEES FOR PARKING ON CAMPUS SUBJECT TO THE APPROVAL OF THE BOARD OF REGENTS AFTER THE REGENTS' CONSULTATION WITH THE RESPECTIVE STUDENT GOVERNING BODY; AMENDING SECTION 20-25-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-312, MCA, is amended to read:

"20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

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(a) assess fees for parking on campus *subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit*;

(b) assess fines in accordance with a published schedule for violations of motor vehicle or parking regulations of each unit in an amount not to exceed $10 per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the concurrence of the state auditor under the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control."

Approved March 18, 1985.

CHAPTER NO. 92

[HB 104]

AN ACT ALLOWING COUNTIES TO INVEST IN REGISTERED WARRANTS OF SCHOOL DISTRICTS AND MUNICIPALITIES; PROVIDING THAT THE BOARD OF COUNTY COMMISSIONERS MAY ESTABLISH THE AMOUNT OF SUCH WARRANTS TO BE PURCHASED AND THE INTEREST RATE TO BE PAID THE COUNTY; AMENDING SECTIONS 7-6-2701, 7-6-4501, AND 7-6-4502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2701, MCA, is amended to read:

"7-6-2701. Investment of certain money in county, municipal, and school warrants. (1) Except as provided in 7-6-2802, *if a* county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, *municipal, or school district registered* warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase *such* warrants of *entities located in* the same county.

(2) For such purchases, the county commissioners shall:

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(a) designate the fund or funds to be so invested;

(b) fix the amount *that may be purchased;*

(c) establish the rate of interest the county shall receive for the investment; and

(d) designate the warrants which are to be purchased by such funds.

(3) The *officer drawing a warrant to be purchased for investment by a county shall* cause to be attached to or stamped, written, or printed upon the *warrant* a notice to the effect that the county will exercise its preference right to purchase *the* warrant.

(4) (a) A school district or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when *a* warrant *designated for purchase under the provisions of subsection (2)* is presented to him, purchase the same out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder *or the applicable officer authorized to draw such warrants.*

(6) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2."

Section 2. Section 7-6-4501, MCA, is amended to read:

"7-6-4501. Interest on unpaid warrants. *(1)* When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the same is not paid for want of funds, the city treasurer or town clerk must endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing his name thereto.

(2) From *the* time *of the endorsement* until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, *or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.*"

Section 3. Section 7-6-4502, MCA, is amended to read:

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"**7-6-4502. Call for payment of warrants drawing interest.** (1) *Except as provided in subsection (2), when* there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the same, the city treasurer or town clerk must:

(a) give notice in some newspaper published in such city or town or, if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that he is ready to pay the warrants and giving the number of the warrants to be paid; *and*

(b) if the warrants are subject to purchase by the county for investment as provided in 7-6-2701, notify the county treasurer that any such warrants in the possession of the county will be paid upon presentation to the city treasurer or town clerk.

(2) If all of such warrants are held by a county, only the notice provided for in subsection (1)(b) is required.

(3) The warrants so called cease to draw interest from the time of the first publication or posting of such notice *unless all of such warrants are held by a county, in which case the warrants cease to draw interest from the time of notification of the county treasurer.*"

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1985.

CHAPTER NO. 93

[HB 210]

AN ACT ESTABLISHING THE CRIMINAL OFFENSE OF NEGLIGENT VEHICULAR ASSAULT WHILE UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Negligent vehicular assault — penalty.** (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol or drugs, as provided for in 61-8-401(1), and his conduct is the proximate cause of serious bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to section 1.

Approved March 18, 1985.

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CHAPTER NO. 94

[HB 213]

AN ACT EXEMPTING DIRECT HOME SALESPEOPLE FROM WORKERS' COMPENSATION; AMENDING SECTION 39-71-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, *or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home*;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, *or for services as a direct seller engaged in the*

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sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Approved March 18, 1985.

CHAPTER NO. 95

[HB 258]

AN ACT TO ADD AS AN EX OFFICIO MEMBER OF THE FLATHEAD BASIN COMMISSION THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OR HIS DESIGNEE; AMENDING SECTION 2-15-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-213, MCA, is amended to read:

"2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of *16* members selected as follows:

(a) four members appointed by the governor from industrial, environmental, and other groups affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who shall be the commissioner of state lands or his designee;

(c) one member appointed by the Flathead County commissioners;

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(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior national park service, regional director for the Rocky Mountain region;

(h) five ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia, the regional administrator of the United States environmental protection agency, the administrator of the Bonneville Power Administration, the chief of engineers of the United States army corps of engineers, and the holder of a license issued for the Flathead project under the Federal Power Act;

(i) one ex officio member who shall be the director of the department of health and environmental sciences or his designee.

(3) The commissioners shall serve without pay. Commissioners mentioned in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Approved March 18, 1985.

CHAPTER NO. 96

[HB 266]

AN ACT TO REQUIRE THAT PAYMENT OF TAXES DUE THE STATE BE DONE BY ELECTRONIC FUNDS TRANSFER WHENEVER THE AMOUNT DUE IS $500,000 OR GREATER; AND PROVIDING AN EFFECTIVE DATE FOR RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

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(3) "Taxes" means the taxes provided for in this title.

Section 2. **Taxes to be paid by electronic funds transfer — limitation.** All taxes due the state must be paid by electronic funds transfer whenever the amount due is $500,000 or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

Section 3. **Rules.** The department shall adopt rules necessary to implement [sections 1 through 3], including but not limited to rules:

(1) coordinating the filing of tax returns with the payment of taxes by electronic funds transfer; and

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment.

Section 4. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 15.

Section 5. **Effective date.** Section 3 and this section are effective July 1, 1985.

Approved March 18, 1985.

CHAPTER NO. 97

[HB 306]

AN ACT REVISING THE LAW RELATING TO THE BOARD OF ATHLETICS; REMOVING THE PROHIBITIONS AGAINST MEMBERS OF THE BOARD OF ATHLETICS BEING AMATEUR BOXERS OR INVOLVED IN AMATEUR BOXING; EMPOWERING THE BOARD TO REGULATE "SO YOU THINK YOU ARE TOUGH" BOXING CARDS AND MUD WRESTLING; ALLOWING REVIEW OF DECISIONS OF OFFICIALS UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING RULES IN RELATION TO REVIEW OF DECISIONS OF OFFICIALS; AMENDING SECTIONS 23-3-403 THROUGH 23-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3-403, MCA, is amended to read:

"23-3-403. Board member conflict of interest. No board member may:

(1) serve as a manager, promoter, or trainer of a professional or semiprofessional boxer or wrestler;

(2) have a financial interest or affiliation in a professional or semiprofessional boxing or wrestling match;

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(3) serve as ring official, timer, referee, or judge at a professional or semiprofessional boxing or wrestling match; or

(4) participate in a professional or semiprofessional boxing or wrestling match."

Section 2. Section 23-3-404, MCA, is amended to read:

"23-3-404. Board jurisdiction — license required — contestant participation. (1) The board has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition, *including "so you think you are tough" boxing matches and mud wrestling,* involving *recognition,* a prize, or purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition conducted:

(a) by a university, college, or high school;

(b) by the military; or

(c) for contestants under 16 years of age, by a recognized amateur association.

(2) No organization or individual may conduct a match or exhibition within the board's jurisdiction unless it or he is the holder of an appropriate license granted by the board.

(3) No referee, manager, or judge may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board.

(4) No professional or semiprofessional boxer or wrestler may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board and his right to participate has not been suspended under 23-3-603."

Section 3. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) The rules must include but are not limited to the following:

(a) the granting, renewal, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. Such qualifications must include appropriate knowledge, experience, and integrity.

(b) the labeling of a match as a championship match;

(c) the number and length of rounds and the weight of gloves;

(d) the extent and timing of the physical examination of contestants;

(e) the attendance of a referee and his powers and duties; *and*

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(f) review of decisions made by officials.

(3) The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules shall require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter."

Section 4. **Extension of authority.** Any existing authority of the board of athletics to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 18, 1985.

CHAPTER NO. 98

[HB 336]

AN ACT REMOVING THE REQUIREMENT THAT THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL SUBMIT AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE; AMENDING SECTION 90-4-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-403, MCA, is amended to read:

"90-4-403. Duties of council members. The council members shall:

(1) undertake the functions and duties prescribed by P.L. 96-501 and in applicable state law; *and*

(2) serve on a full- or part-time basis as determined by the governor."

Approved March 18, 1985.

CHAPTER NO. 99

[HB 390]

AN ACT CHANGING THE LAW ON DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO INCLUDE ALL VEHICLES; AMENDING SECTIONS 61-1-103, 61-8-401, 61-8-402, 61-8-404, AND 61-8-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public

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highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part; *and in chapter 8, part 4, this term does not include a bicycle as defined in 61-1-123.*"

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section

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changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the officer shall, on behalf of the division, immediately seize his driver's license. The peace officer shall forward the license to the division, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the division shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the division, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the division, a revocation of 1 year with no provision for a restricted probationary license.

(6) Like refusal by a nonresident shall be subject to suspension by the division in like manner, and the same temporary driving permit shall be issued to nonresidents.

(7) All such suspensions are subject to review as hereinafter provided."

Section 4. Section 61-8-404, MCA, is amended to read:

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"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of the amount of alcohol in the person's blood at the time of the act alleged, as shown by a chemical analysis of his blood, breath, or urine, is admissible; and

(b) a report of the facts and results of any chemical test of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath analysis report was prepared and verified by the person who performed the test or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the report was prepared in accordance with any applicable rules of the department; and

(iii) if the test was on a blood sample, the person withdrawing the blood must have been competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

Section 5. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more."

Approved March 18, 1985.

CHAPTER NO. 100

[HB 715]

AN ACT EXEMPTING FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT EMPLOYMENT AS AN OFFICIAL AT A SCHOOL AMATEUR ATHLETIC EVENT; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all

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employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

(h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or

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permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. **Applicability.** This act applies to all claims arising from injuries sustained on or after October 1, 1985.

Approved March 18, 1985.

CHAPTER NO. 101

[SB 17]

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO BUSINESS AND LABOR; AMENDING SECTIONS 30-9-410, 30-14-221, 30-15-104, 33-19-405, 33-19-406, AND 39-71-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-410, MCA, is amended to read:

"30-9-410. Continued applicability of laws to transmitting utilities. Unless displaced by the specific provisions of *30-9-409*, this code and other applicable laws remain in full force and effect and supplement the provisions of *30-9-409*."

Section 2. Section 30-14-221, MCA, is amended to read:

"30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has

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jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits the *department* from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the *department* determines, in *its* sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

Section 3. Section 30-15-104, MCA, is amended to read:

"30-15-104. Taxation of corporations operating foreign-trade zones and their goods. Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15."

Section 4. Section 33-19-405, MCA, is amended to read:

"33-19-405. Civil penalties. If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of this chapter, the commissioner may order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations."

Section 5. Section 33-19-406, MCA, is amended to read:

"33-19-406. Judicial review of orders and reports. Any person subject to an order of the commissioner under *33-1-706* or 33-19-405 or any person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711."

Section 6. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor."

Approved March 19, 1985.

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CHAPTER NO. 102

[SB 60]

AN ACT TO REPLACE THE UNIFORM GIFTS TO MINORS ACT WITH THE UNIFORM TRANSFERS TO MINORS ACT; REPEALING TITLE 72, CHAPTER 26, PARTS 1 THROUGH 4, MCA; AND PROVIDING AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Uniform Transfers to Minors Act".

Section 2. **Uniformity of application and construction.** [This act] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [this act] among states enacting it.

Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of 18 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under [this act]; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under [section 11] or a successor or substitute custodian designated under [section 20].

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

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(11) "Minor" means an individual who has not attained the age of 18 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under [section 11].

(16) "Transferor" means a person who makes a transfer under [this act].

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

Section 4. **Scope and jurisdiction.** (1) [This act] applies to a transfer that refers to [this act] in the designation under [section 11(1)] by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to [this act] despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under [this act] is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

Section 5. **Nomination of custodian.** (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

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(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under [section 11(1)].

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under [section 11]. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to [section 11].

Section 6. **Transfer by gift or exercise of power of appointment.** A person may make a transfer by irrevocable gift to or the irrevocable exercise of a power of appointment in favor of a custodian for the benefit of a minor pursuant to [section 11].

Section 7. **Transfer authorized by will or trust.** (1) A personal representative or trustee may make an irrevocable transfer pursuant to [section 11] to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under [section 5] to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under [section 5] or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under [section 11(1)].

Section 8. **Other transfer by fiduciary.** (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to [section 11], in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to [section 11].

(3) A transfer under subsection (1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) the transfer is authorized by the court if it exceeds $10,000 in value.

Section 9. **Transfer by obligor.** (1) Subject to subsections (2) and (3), a person not subject to [section 7 or 8] who holds property of or owes a

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liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to [section 11].

(2) If a person having the right to do so under [section 5] has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under [section 5] or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

Section 10. **Receipt for custodial property.** A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to [this act].

Section 11. **Manner of creating custodial property and effecting transfer — designation of initial custodian — control.** (1) Custodial property is created and a transfer is made whenever:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

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(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(g) an interest in any property not described in subsections (1)(a) through (1)(f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2).

(2) An instrument in the following form satisfies the requirements of subsections (1)(a)(ii) and (1)(g):

"TRANSFER UNDER THE MONTANA UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

.....
(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Montana Uniform Transfers to Minors Act.

Dated: .....

.....
(Signature of Custodian)"

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(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Section 12. **Single custodianship.** A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under [this act] by the same custodian for the benefit of the same minor constitutes a single custodianship.

Section 13. **Validity and effect of transfer.** (1) The validity of a transfer made in a manner prescribed in [this act] is not affected by:

(a) failure of the transferor to comply with [section 11(3)] concerning possession and control;

(b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under [section 11(1)]; or

(c) death or incapacity of a person nominated under [section 5] or designated under [section 11] as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to [section 11] is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in [this act], and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in [this act].

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of [this act] and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in [this act].

Section 14. **Care of custodial property.** (1) A custodian shall:

(a) take control of custodial property;

(b) register or record title to custodial property if appropriate; and

(c) collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

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(b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian, in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

Section 15. **Powers of custodian.** (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of [section 14].

Section 16. **Use of custodial property.** (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Section 17. **Custodian's expenses, compensation, and bond.** (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

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(2) Except for one who is a transferor under [section 6], a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in [section 20(6)], a custodian need not give a bond.

Section 18. **Exemption of third person from liability.** A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of or the authority under [this act] for any act of the purported custodian;

(3) the validity or propriety under [this act] of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

Section 19. **Liability to third persons.** (1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor when it is based on:

(a) a contract entered into by a custodian acting in a custodial capacity;

(b) an obligation arising from the ownership or control of custodial property; or

(c) a tort committed during the custodianship.

(3) A custodian is not personally liable:

(a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Section 20. **Renunciation, resignation, death, or removal of custodian — designation of successor custodian.** (1) A person nominated under [section 5] or designated under [section 11] as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under [section 5], the

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person who made the nomination may nominate a substitute custodian under [section 5]; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under [section 11(1)]. The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under [section 6] as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) or resigns under subsection (3) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under [section 6] or to require the custodian to give appropriate bond.

Section 21. **Accounting by and determination of liability of custodian.** (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(a) for an accounting by the custodian or the custodian's legal representative; or

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(b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under [section 19] to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under [this act] or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under [section 20(6)], the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Section 22. **Termination of custodianship.** The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under [section 6 or 7];

(2) the minor's attainment of 18 years of age with respect to custodial property transferred under [section 8 or 9]; or

(3) the minor's death.

Section 23. **Applicability.** This act applies to a transfer within the scope of [section 4] made after October 1, 1985, if:

(1) the transfer purports to have been made under the provisions of Title 72, chapter 26, parts 1 through 4 (repealed by [section 25]);

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this act is necessary to validate the transfer.

Section 24. **Effect on existing custodianships.** (1) Any transfer of custodial property as now defined in [this act] made before October 1, 1985, is validated notwithstanding that there was no specific authority in Title 72, chapter 26, parts 1 through 4 (repealed by [section 25]), for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) [This act] applies to all transfers made before October 1, 1985, in a manner and form prescribed in Title 72, chapter 26, parts 1 through 4, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on October 1, 1985.

(3) [Sections 3 and 22] with respect to the age of a minor for whom custodial property is held under [this act] do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 before October 1, 1985.

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Section 25. **Repealer.** Title 72, chapter 26, parts 1 through 4, MCA, are repealed.

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 19, 1985.

CHAPTER NO. 103

[SB 123]

AN ACT INCREASING THE AMOUNT OF THE MAXIMUM INCENTIVE AWARD PERMITTED UNDER THE STATEWIDE EMPLOYEE INCENTIVE AWARD PROGRAM FROM $500 TO $1,500; REMOVING THE PROVISION TERMINATING THE PROGRAM; AMENDING SECTION 2-18-1106, MCA; REPEALING SECTION 7, CHAPTER 552, LAWS OF 1981, AS AMENDED BY SECTION 1, CHAPTER 61, LAWS OF 1983; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1106, MCA, is amended to read:

"2-18-1106. Agency head to grant award — amount and source of award. (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award may not be more than 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of *$1,500*. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation."

Section 2. **Repealer.** Section 7, Chapter 552, Laws of 1981, as amended by section 1, Chapter 61, Laws of 1983, is repealed.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 19, 1985.

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CHAPTER NO. 104

[HB 43]

AN ACT ADOPTING THE UNIFORM TRADE SECRETS ACT; DEFINING "TRADE SECRET"; AND PROVIDING CIVIL REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the Uniform Trade Secrets Act.

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper

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means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 3. **Injunctive relief — royalty.** (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 4. **Damages.** (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

Section 5. **Costs and attorney fees.** If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

Section 6. **Preservation of secret.** In an action under [this act], a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Section 7. **Statute of limitations.** An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Section 8. **Effect on other law.** (1) [This act] displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) [This act] does not affect:

(a) contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

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(b) criminal liability for misappropriation of a trade secret.

Section 9. **Uniformity of application and construction.** [This act] shall be applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of [this act] among states enacting it.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 19, 1985.

CHAPTER NO. 105

[HB 52]

AN ACT TO CHANGE THE PENALTIES THAT MAY BE IMPOSED FOR UNLAWFUL POSSESSION OF INTOXICATING SUBSTANCES BY CHILDREN, TO PROVIDE A REMEDY FOR FAILURE TO COMPLY WITH A SENTENCE, AND TO MAKE IT AN OFFENSE TO CAUSE ONE'S CHILD OR WARD TO FAIL TO COMPLY WITH A SENTENCE OR A YOUTH COURT ORDER; AMENDING SECTIONS 16-6-314 AND 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed $50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

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(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings *for violation of subsection (1)* are held in the youth court, the *penalties in subsection (2) do* not apply. *If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court,* the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Section 2. Section 16-6-314, MCA, is amended to read:

"**16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.** *(1) A* person *who violates a provision* of this code *is* guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If *a* retail licensee is convicted of *an* offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 19 years of age *who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2).*"

Approved March 19, 1985.

CHAPTER NO. 106

[HB 153]

AN ACT TO ENTITLE STATE EMPLOYEES IN A JOB-SHARING STATUS TO THE SAME BENEFITS THAT PERMANENT PART-TIME EMPLOYEES RECEIVE; AMENDING SECTION 2-18-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-107, MCA, is amended to read:

"**2-18-107. Job-sharing positions — benefits.** (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. However, job sharing may be actively pursued to fill vacated or new positions and may not be actively pursued to replace current full-time employees. However, on request of a current employee, his position may be considered for job

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sharing. A position may be filled by more than one incumbent currently in a full-time position.

(2) *Employees in a job-sharing status are entitled to* holiday pay, annual leave, sick leave, and health benefits *on the same basis as permanent part-time employees provided for in 2-18-603, 2-18-611, 2-18-618, and 2-18-703.*

(3) Employees classified in a part-time status may not be reclassified to a job-sharing status while employed in the position classified as part-time."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1985.

CHAPTER NO. 107

[HB 178]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS FEES TO DEFRAY PART OF THE COST OF ESTABLISHING, MAINTAINING, AND OPERATING A STATE HAZARDOUS WASTE MANAGEMENT FACILITY; AMENDING SECTIONS 75-10-405 AND 75-10-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"75-10-405. Administrative rules. The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters;

(8) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

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(9) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412; and

(10) other rules which are necessary to obtain and maintain authorization under the federal program, except that the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended."

Section 2. Section 75-10-412, MCA, is amended to read:

"75-10-412. State hazardous waste facilities. *(1)* The department may:

(a) if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes;

(b) acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility;

(c) operate and maintain such a facility directly or through agreement with public or private persons; *and*

(d) collect reasonable fees to defray a portion of the costs of establishing, maintaining, and operating the facility.

(2) A state facility must meet all applicable requirements for a hazardous waste management facility under this part."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 19, 1985.

CHAPTER NO. 108

[HB 180]

AN ACT TO CLARIFY THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES HAS THE AUTHORITY TO SEEK INJUNCTIVE RELIEF COMPELLING AFFIRMATIVE COMPLIANCE WITH THE MONTANA HAZARDOUS WASTE ACT OR AN ORDER, PERMIT, OR RULE ISSUED UNDER IT; AMENDING SECTION 75-10-414, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-414, MCA, is amended to read:

"75-10-414. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

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(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; *or*

(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 19, 1985.

CHAPTER NO. 109

[HB 189]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES REQUIRING HAZARDOUS WASTE TRANSPORTERS TO REGISTER WITHIN MONTANA AND HAZARDOUS WASTE GENERATORS AND FACILITIES TO FILE REPORTS ON AN ANNUAL BASIS; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** *(1)* The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

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(f) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(g) requirements for registration of generators and transporters;

(h) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators; and

(i) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department may:

(a) require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended; and

(b) require generators and facilities to report on an annual rather than on a biennial basis."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1985.

CHAPTER NO. 110

[HB 209]

AN ACT TO REQUIRE THE TRUSTEES OF A DISTRICT WHO REQUEST AN ADDITIONAL LEVY TO FINANCE THE DISTRICT'S GENERAL FUND BUDGET TO PLACE ONLY THE AMOUNT TO BE RAISED BY THE LEVY ON THE SPECIAL ELECTION LEVY BALLOT; TO PROVIDE THAT NO ELECTION IS REQUIRED TO PERMIT THE TRUSTEES TO USE ANY AVAILABLE FUNDS TO FINANCE A GENERAL FUND BUDGET OTHER THAN THOSE FUNDS TO BE RAISED BY AN ADDITIONAL LEVY; AMENDING SECTIONS 20-9-141 AND 20-9-353, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute

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the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of *the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:*

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated state impact aid received under the provisions of 20-9-304;

(v) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(vi) anticipated interest to be earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(vii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 2. Section 20-9-353, MCA, is amended to read:

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"20-9-353. Additional levy for general fund — election for authorization to impose. (1) The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district.

(2) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that no election shall be required to permit the school trustees to use *any funds available to finance the additional amount other than those funds to be raised by the additional levy.* Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state *only* the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy.

(3) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

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(4) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1985.

CHAPTER NO. 111

[HB 217]

AN ACT PROVIDING THAT THE RESPONSIBILITY FOR THE ADMINISTRATION AND DEVELOPMENT OF RULES FOR EMERGENCY AND DISASTER EXPENDITURES BE TRANSFERRED FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF MILITARY AFFAIRS; AMENDING SECTION 10-3-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-311, MCA, is amended to read:

"10-3-311. Emergency or disaster expenditures. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) The governor is charged with the implementation of the program.

(3) The administration and development of rules for implementation of this section must be promulgated by the department."

Approved March 19, 1985.

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CHAPTER NO. 112

[HB 251]

AN ACT REVISING LAWS RELATING TO CLAIMS ARISING FROM OCCUPATIONAL DISEASE; PROVIDING THAT THE STATUTE OF LIMITATIONS FOR TOTAL DISABILITY CLAIMS ARISING FROM AN OCCUPATIONAL DISEASE WILL RUN FROM THE TIME OF DISCOVERY THAT THE DISABILITY CONDITION RESULTED FROM AN OCCUPATIONAL DISEASE; REMOVING RESTRICTIONS ON FILING OF CLAIMS FOR SILICOSIS BENEFITS; AMENDING SECTIONS 39-72-303, 39-72-403, 39-72-405, AND 39-72-711, MCA; REPEALING SECTIONS 39-72-406 AND 39-72-407, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-72-303, MCA, is amended to read:

"39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease.

(2) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, is liable for and must secure the payment of all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine, and the prior operator of such mine shall not be relieved of any liability under this section."

Section 2. Section 39-72-403, MCA, is amended to read:

"39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within *2 years* from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years."

Section 3. Section 39-72-405, MCA, is amended to read:

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"39-72-405. General limitations on payment of compensation. (1) *Compensation* may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000."

Section 4. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405*(2)*, a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 5. **Repealer.** Sections 39-72-406 and 39-72-407, MCA, are repealed.

Section 6. **Applicability.** This act applies to claims arising from exposures occurring on or after the effective date of this act.

Approved March 19, 1985.

CHAPTER NO. 113

[HB 268]

AN ACT TO DESIGNATE THE AGENCY LETTING A CONTRACT AS THE RESPONSIBLE PARTY FOR HOLDING SECURITIES IN LIEU OF RETAINED PAYMENTS; AMENDING SECTIONS 18-1-301 THROUGH 18-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-301, MCA, is amended to read:

"18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of

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Montana or any department, agency, or political subdivision thereof, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana or any department, agency, or political subdivision thereof pursuant to the terms of such contract, provided the contractor shall deposit with the *contracting agency*:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract."

Section 2. Section 18-1-302, MCA, is amended to read:

"18-1-302. Servicing of deposited obligations. After notice to the owner and surety, the *contracting agency* shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with *it* pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part."

Section 3. Section 18-1-303, MCA, is amended to read:

"18-1-303. Interest or income on deposits to contractor. (1) The *contracting agency* or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the *contracting agency or the designated custodian, pursuant to 18-1-302,* shall deliver each such coupon as it matures to the contractor."

Section 4. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1985.

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CHAPTER NO. 114

[HB 367]

AN ACT ALLOWING REGISTERED PROFESSIONAL LAND SURVEYORS TO CERTIFY FLOOR PLANS FOR CONDOMINIUMS; AMENDING SECTION 70-23-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-306, MCA, is amended to read:

"70-23-306. Floor plans recorded with declaration — certification. (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of *a* registered architect, registered professional engineer, *or registered professional land surveyor* who *has reviewed* the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by *an* architect, engineer, *or surveyor* that the plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, *or registered professional land surveyor* certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed."

Approved March 19, 1985.

CHAPTER NO. 115

[HB 416]

AN ACT TO PROVIDE THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION MUST RECEIVE A COPY OF ALL SCHOOL DISTRICT AUDITS; AMENDING SECTION 20-9-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-203, MCA, is amended to read:

"20-9-203. Examination of district accounting records. (1) The accounting records of all first- and second-class school districts and third-class school districts that maintain a high school shall be audited in accordance with 2-7-503.

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(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the *superintendent of public instruction, the* county superintendent, and the county clerk and recorder."

Approved March 19, 1985.

CHAPTER NO. 116

[HB 543]

AN ACT CHANGING THE DATE FOR THE FILING OF LONG-RANGE PLANS UNDER THE MAJOR FACILITY SITING ACT FROM APRIL 1 TO JULY 1 OF EACH YEAR; AMENDING SECTION 75-20-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by *July* 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts

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to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department."

Section 2. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1985.

CHAPTER NO. 117

[HB 85]

AN ACT TO MAKE STATE-OWNED GOLF COURSES ELIGIBLE FOR PUBLICLY OWNED GOLF COURSE BEER AND WINE LICENSES; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-109, MCA, is amended to read:

"16-4-109. Publicly owned golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and

wine license, to be known as a publicly owned golf course beer and wine license, for use at a golf course *owned by the state, a unit of the university system, or a local government.*

(2) The application must be made by the *state agency, unit of the university system, or local government that owns and operates* the public golf course. The *owner* may lease the license for use at the golf course to an individual or entity approved by the department.

(3) A publicly owned golf course beer and wine license and all retail beer and wine sales thereunder are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(4) The department of revenue shall issue a publicly owned golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1985.

CHAPTER NO. 118

[HB 96]

AN ACT TO DECREASE THE NUMBER OF DAYS AFTER THE MARKETING OF OIL AND GAS THAT AN OPERATOR MUST PAY ROYALTIES TO A ROYALTY OWNER BEFORE INCURRING AN ADDITIONAL OBLIGATION TO PAY INTEREST ON THE UNPAID ROYALTIES; AMENDING SECTION 82-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-10-103, MCA, is amended to read:

"82-10-103. Obligation to pay royalties as essence of contract — interest. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or his assignee, to deliver oil or gas to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such oil or gas to the royalty owner or his assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within *120* days after *the initial* oil or gas produced under the lease is marketed *and within 60 days for all oil and 90 days for all gas produced and marketed thereafter*, the unpaid royalties *will* bear interest, at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50 *and annually whenever the aggregate amount is less than $10.*

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(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking such payments under this section shall bring his action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any such actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover his court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or his assignee has elected to take his proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments."

Approved March 20, 1985.

CHAPTER NO. 119

[HB 150]

AN ACT TO PROVIDE THAT THE FEES COLLECTED FOR FILING OF DOCUMENTS RELATING TO ASSUMED BUSINESS NAMES, TRADEMARKS, NONPROFIT CORPORATIONS, AND CHAPTER 9 OF THE UNIFORM COMMERCIAL CODE BE ESTABLISHED BY THE SECRETARY OF STATE COMMENSURATE WITH COSTS; AMENDING SECTIONS 30-9-403, 30-13-217, 30-13-311, 30-13-313, 30-13-315, AND 35-2-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Secretary of state to establish and collect fees commensurate with costs.** The secretary of state shall by administrative rule establish and provide for collection of fees and miscellaneous charges for filing documents and issuing certificates as required by this part. The fees must be commensurate with the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.

Section 2. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsection *(7)*, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs

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later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection *(7)* shall be retained.

(4) Except as provided in subsection *(8)*, a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be *set pursuant to subsection (6) and must include fees* for:

(a) an original financing or continuation statement in standard form;

(b) a termination statement in standard form;

(c) a financing statement indicating an assignment in standard form;

(d) a statement of release of collateral in standard form;

(e) a certificate from the filing officer showing that an effective financing statement is on file, requested in the standard form;

(f) any of the documents in (a) through (e) other than in standard form;

(g) each name more than one required to be indexed;

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(h) a uniform indexing fee for showing a trade name for any person; and

(i) any of the filing and indexing in subsections (a), (b), or (d) where the collateral is equipment or rolling stock of railroads or street railways.

(6) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees for filing and indexing documents as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall disseminate the uniform fees to the county clerk and recorders for their use.

(7) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(8) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described."

Section 3. Section 30-13-217, MCA, is amended to read:

"30-13-217. Fees and charges to be established and collected by secretary of state. *(1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:*

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section."

Section 4. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

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(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of such mark.

(4) The application for registration must be accompanied by a filing fee *as provided for in [section 1]*."

Section 5. Section 30-13-313, MCA, is amended to read:

"**30-13-313. Duration and renewal.** (1) Registration of a mark under this part is effective for a term of 10 years from the date of registration, and upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed by the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee *as provided for in [section 1]*."

Section 6. Section 30-13-315, MCA, is amended to read:

"**30-13-315. Assignment.** (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of

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state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee *as provided for in [section 1]*."

Section 7. Section 35-2-1001, MCA, is amended to read:

"**35-2-1001. Fees and charges to be established and collected by secretary of state.** *(1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this chapter and commensurate with costs:*

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees established under this section."

Section 8. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to section 1.

Approved March 20, 1985.

CHAPTER NO. 120

[HB 159]

AN ACT TO PROVIDE FOR THE SALE OR DISPOSAL OF WILD ANIMALS KILLED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR A LANDHOLDER AUTHORIZED TO KILL WILD ANIMALS BECAUSE OF PROPERTY DAMAGE; AMENDING SECTIONS 87-1-226, 87-1-511, AND 87-1-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-226, MCA, is amended to read:

"**87-1-226. Disposition of meat of animals damaging property.** *(1)* The meat of all animals killed or destroyed pursuant to 87-1-225 by the

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department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the department of social and rehabilitation services, *or charitable institutions*. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of social and rehabilitation services, or charitable institutions shall be sold as provided in 87-1-511."

Section 2. Section 87-1-511, MCA, is amended to read:

"**87-1-511. Sale of confiscated birds and animals.** *Except as provided in 87-1-226(1), all* birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer or warden *or otherwise acquired by a department employee in the scope of his employment may* be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions which in the discretion of the officers seem conducive to securing full value."

Section 3. Section 87-1-513, MCA, is amended to read:

"**87-1-513. Disposition of proceeds of sale.** The money obtained upon the sale of such property shall be paid over to the court before whom the person having the same in possession at the time of seizure is prosecuted or in which prosecution is pending; and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure, or sale as herein provided. Where wild animals, game birds, or fish are seized as in this part provided and the person or persons who killed or captured the same cannot be ascertained *or where the animals sold were killed pursuant to 87-1-225*, then the money so received from the sale of such animals, game birds, or fish shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1985.

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CHAPTER NO. 121

[HB 163]

AN ACT INCREASING THE TIME PERIOD FOR WHICH THE STATE CAN CONTRACT FOR THE LEASE OR PURCHASE OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FROM 3 YEARS TO 10 YEARS; AMENDING SECTION 18-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-313, MCA, is amended to read:

"**18-4-313. Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, *and the department of social and rehabilitation services medicaid management information system (MMIS)* for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 20, 1985.

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CHAPTER NO. 122

[HB 166]

AN ACT RELIEVING THE COUNTY TREASURER OF THE DUTY TO POST IN THREE PUBLIC PLACES THE DELINQUENT LIST OF PERSONS AND PROPERTY OWING TAXES; REQUIRING THE TREASURER TO POST ONLY THE NOTICE OF TAX SALE, INCLUDING A STATEMENT THAT THE DELINQUENT LIST IS AVAILABLE FOR INSPECTION IN THE TREASURER'S OFFICE; AMENDING SECTION 15-17-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-101, MCA, is amended to read:

"15-17-101. Publication of notice of tax sales. (1) On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in this section a notice specifying:

(a) that at a given time and place (to be designated in the notice), all property in the county upon which delinquent taxes are a lien will be sold at public auction unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon, are paid;

(b) a complete delinquent list of all persons and property in the county now owing taxes, including all city and town property as to which taxes or taxes and assessments are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

(2) The publication must be made once a week for 3 successive weeks in such newspaper published in the county as the board of county commissioners directs; if there is no newspaper published in the county, then by posting *the notice* in three public places.

(3) The publication must designate the time and place of sale.

(4) The time of sale must not be less than 21 or more than 28 days from the first publication, and the place must be in front of the county treasurer's office."

Approved March 20, 1985.

CHAPTER NO. 123

[HB 196]

AN ACT ABOLISHING THE POPULATION LIMITATION IN THE STATUTE ALLOWING POLITICAL SUBDIVISIONS TO DISPENSE WITH NONPARTISAN PRIMARY ELECTIONS IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 13-14-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-14-115, MCA, is amended to read:

"13-14-115. Preparation and distribution of nonpartisan primary ballots. (1) The election administrators shall arrange, prepare, and

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distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

(3) *The* governing body *of a political subdivision* may determine that a primary need not be held if:

(a) the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot;

(b) the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot; and

(c) the governing body passes a resolution not more than 7 days after the close of filing by candidates for election stating that a primary election need not be held."

Approved March 20, 1985.

CHAPTER NO. 124

[HB 202]

AN ACT REVISING THE METHOD OF FUNDING COMMUNITY MENTAL HEALTH SERVICES; ELIMINATING THE AUTHORITY TO TRANSFER FUNDS FROM THE MONTANA STATE HOSPITAL TO COMMUNITY MENTAL HEALTH SERVICES AND FOR REVERSION OF SUCH FUNDS; AMENDING SECTION 53-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-203, MCA, is amended to read:

"**53-21-203. Departmental contracts with mental health corporations.** The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Under rules adopted by the department, mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or hospitals."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 20, 1985.

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CHAPTER NO. 125

[HB 428]

AN ACT TO GENERALLY REVISE THE UNEMPLOYMENT INSURANCE LAW; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-204, 39-51-301, 39-51-302, 39-51-304, 39-51-305, 39-51-402, 39-51-1103, 39-51-1109, 39-51-1305, 39-51-2104, 39-51-2307, AND 39-51-2410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

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(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

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(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(15) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(16) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(17) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, *and backpay received pursuant to a dispute related to employment.* The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(18) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(19) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of *$1,000*;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent

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to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 3. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

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(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. *"Regularly employed" means the services are performed during at least 24 days in the same quarter.*

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

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(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 4. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It shall be the duty of the department to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which shall be judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter."

Section 5. Section 39-51-302, MCA, is amended to read:

"39-51-302. Administrative rules. *The department may adopt procedural and substantive rules necessary to implement this chapter.*"

Section 6. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. The department shall hire *personnel to administer this chapter* in accordance with merit system principles adopted by the *department of administration.*"

Section 7. Section 39-51-305, MCA, is amended to read:

"39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial *salaried* appeals referees as are necessary for the proper administration of this chapter in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee."

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Section 8. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The *commissioner of labor and industry* is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer such fund in accordance with *this chapter*. He shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately *deposited* in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance fund."

Section 9. Section 39-51-1103, MCA, is amended to read:

"39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only."

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Section 10. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals. Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review *in accordance with Title 2, chapter 4, parts 6 and 7.*"

Section 11. Section 39-51-1305, MCA, is amended to read:

"39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding."

Section 12. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within his benefit year only if the department finds that:

(1) he has *filed a claim* at and thereafter has continued to report at an employment office in accordance with such regulation as the department may prescribe, except that the department may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may *file a claim* and report for work by mail or through other governmental agencies;

(2) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(3) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

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Section 13. Section 39-51-2307, MCA, is amended to read:

"39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104*(2)*."

Section 14. Section 39-51-2410, MCA, is amended to read:

"39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the department when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board. The department shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry *and all other interested parties in the manner provided in the Montana Rules of Civil Procedure.*

(3) With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all

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other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination."

Section 15. **Collection of benefit overpayments.** A person who receives benefits not authorized by this chapter shall repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount received by him unless the department finds that the benefits were received through no fault of the person and the recovery of such benefits would be against equity and good conscience.

Section 16. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 17. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1985.

CHAPTER NO. 126

[HB 605]

AN ACT TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH STANDARDS FOR AND APPROVE CHEMICAL DEPENDENCY EDUCATIONAL COURSES PROVIDED BY STATE-APPROVED TREATMENT PROGRAMS AND CERTIFY COURSE INSTRUCTORS; AMENDING SECTION 53-24-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

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(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium. These updates or any part thereof may be included in the department's report to the legislature;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; *and*

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions; *and*

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses."

Approved March 20, 1985.

CHAPTER NO. 127

[HB 620]

AN ACT REQUIRING TRAINING AND CERTIFICATION OF CERTAIN JUDGES THROUGH A COURSE PRESCRIBED BY THE COMMISSION ON COURTS OF LIMITED JURISDICTION; ALLOWING THE COMMISSION TO ISSUE TEMPORARY CERTIFICATES; PROVIDING FOR REIMBURSEMENT OF EXPENSES; AND CREATING A VACANCY FOR FAILURE TO OBTAIN A CERTIFICATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Commission" means the commission on courts of limited jurisdiction established by the supreme court.

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(2) "Judge" means:

(a) a municipal court judge;

(b) a justice of the peace; or

(c) a city judge.

Section 2. **Training and certification of judges.** Except as provided in [section 3], no judge selected for a term of office commencing on or after January 6, 1986, may assume the functions of his office unless he has filed with the county clerk and recorder in his jurisdiction a certificate of completion of a course of education and training prescribed by the commission.

Section 3. **Exception.** [Section 2] does not apply to a judge who has received a temporary certificate issued by the commission as provided for in [section 4].

Section 4. **Temporary certificate.** (1) The commission may issue a temporary certificate enabling a judge to assume the functions of his office pending completion of a course as required by [section 2]. The temporary certificate must be in a form and subject to the terms and conditions prescribed by the commission.

(2) The commission may issue a temporary certificate only if:

(a) the judge is appointed or elected for his first term after the course is offered; or

(b) the commission grants an excuse because of a personal illness, a death in the family, or other good cause.

Section 5. **Expenses.** Each judge is entitled to reimbursement for all actual and necessary travel expenses and other costs incurred in attending a course of training and education pursuant to [section 2]. Such reimbursement must be paid as provided for in 3-10-203 and 3-11-204.

Section 6. **Disqualification.** Each judge shall complete a course of training and education as required by [section 2]. Subject to [section 4], failure to obtain a certificate of completion disqualifies the elected or appointed judge from assuming office and creates a vacancy in the office.

Section 7. **Credit toward annual training.** Attendance of a training course prescribed by [section 2] shall apply toward fulfillment of mandatory annual training requirements provided in 3-10-203 and 3-11-204.

Section 8. **Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to sections 1 through 7.

Approved March 20, 1985.

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CHAPTER NO. 128

[HB 755]

AN ACT REVISING THE MAJOR FACILITY SITING ACT BY CHANGING THE FILING FEE PAID FOR PROCESSING APPLICATIONS AND BY PROVIDING FOR HEARINGS ON THE REVOCATION OR SUSPENSION OF CERTIFICATES; AMENDING SECTIONS 75-20-215 AND 75-20-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall be deposited in the state special revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) .4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) .125% of any amount of estimated cost over $300 million *and up to $1 billion; plus*

(vi) .05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a

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contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 2. Section 75-20-403, MCA, is amended to read:

"75-20-403. Revocation or suspension of certificate. *Following notice and an opportunity for a hearing, a* certificate may be revoked or suspended by the board:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department."

Section 3. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 20, 1985.

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CHAPTER NO. 129

[SB 3]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 14, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE PEOPLE OR THE LEGISLATURE MAY ESTABLISH THE LEGAL AGE FOR PURCHASING, CONSUMING, OR POSSESSING ALCOHOLIC BEVERAGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article II, section 14, of the Constitution of the State of Montana is amended to read:

"Section 14. **Adult rights.** A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for *purchasing,* consuming, or possessing alcoholic beverages."

Section 2. **Effective date.** If approved by the electorate, this amendment becomes effective January 1, 1987.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the State of Montana at the general election held in November 1986 by printing on the ballot the full title of this act and the following:

☐ FOR removing the legal drinking age of 19 years from the constitution and allowing the legal drinking age to be established by statute or initiative.

☐ AGAINST removing the legal drinking age of 19 years from the constitution and allowing the legal drinking age to be established by statute or initiative.

Approved March 21, 1985.

CHAPTER NO. 130

[HB 197]

AN ACT INCREASING THE AMOUNT IN PENSION BENEFITS THAT MAY BE PAID TO A VOLUNTEER FIREFIGHTER'S SURVIVING SPOUSE OR DEPENDENT CHILD UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-12-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-405, MCA, is amended to read:

"19-12-405. Pension benefits to surviving spouse or children. (1) The full or partial participation pension shall be paid or continue to be

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paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death *on or after July 1, 1985,* of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death *on or* after *July 1, 1985,* of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death *on or after July 1, 1985,* of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least *$4,000;* or

(d) the death *on or after July 1, 1985,* of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of *$4,000* determined under the formula prescribed in 19-12-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of *$4,000* has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of *$4,000* determined under the formula prescribed in 19-12-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death."

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 21, 1985.

CHAPTER NO. 131

[HB 276]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO PROVIDE TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES CERTAIN INFORMATION PERTAINING TO APPLICANTS FOR PUBLIC ASSISTANCE; AMENDING SECTION 15-30-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is

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unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the

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statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the division of motor vehicles of the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling said division to administer the provisions of 61-5-105; *and*

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 21, 1985.

CHAPTER NO. 132

[HB 335]

AN ACT TO ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM OF AN OFFENSE; TO REQUIRE THE COURT TO HOLD A HEARING PRIOR TO THE AWARD OF RESTITUTION; AMENDING SECTION 46-9-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-504, MCA, is amended to read:

"**46-9-504. Procedure on forfeiture — restitution.** *(1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:*

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or

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forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss. An order to require restitution is a judgment against the defendant and his sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in subsection (1). Provided no such determination or decision under this subsection shall be admissible as evidence in any other civil action, nor shall it be res judicata in any other civil action."

Approved March 21, 1985.

CHAPTER NO. 133

[SB 34]

AN ACT TO ESTABLISH ALCOHOLIC BEVERAGE LICENSING CRITERIA FOR A BUSINESS ENTITY OTHER THAN A CORPORATION OR AN INDIVIDUAL; AMENDING SECTION 16-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i); *and*

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is

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likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana; *and*

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture or wholesaling of an alcoholic beverage, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

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(iv) the corporation is authorized to do business in Montana; *and*

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 134

[SB 36]

AN ACT AMENDING SECTION 16-3-103, MCA, TO REMOVE THE REFERENCE TO ALCOHOLIC BEVERAGE CLUB LICENSEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-103, MCA, is amended to read:

"16-3-103. Unlawful sales solicitation or advertising — exceptions. (1) No person within the state shall:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or hold himself out as such agent or intermediary unless permitted to do so under rules that shall be promulgated by the department to govern such activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

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(2) This section shall not apply to:

(a) the department, any act of the department, any state liquor store; or

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator, or employee."

Approved March 22, 1985.

CHAPTER NO. 135

[SB 37]

AN ACT REMOVING THE STATE TAX APPEAL BOARD FROM THE APPEAL PROCESS RELATIVE TO BEER AND LIQUOR LICENSING; AMENDING SECTION 16-4-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-411, MCA, is amended to read:

"**16-4-411. Appeals concerning liquor and beer laws.** *(1)* Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of beer or liquor licenses to the *district court in the county in which the issuance, transfer, suspension, or revocation occurred or, at the appellant's option, in the district court of the first judicial district.*

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7."

Approved March 22, 1985.

CHAPTER NO. 136

[SB 117]

AN ACT TO CLARIFY THE TREATMENT OF POSTSECONDARY VOCATIONAL-TECHNICAL CENTER FUNDS FOR PURPOSES OF THE STATEWIDE BUDGETING AND ACCOUNTING SYSTEM; AMENDING SECTIONS 17-2-102 AND 17-2-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-102, MCA, is amended to read:

"**17-2-102. Fund structure.** (1) There are in the state treasury only the following fund categories and types:

(a) governmental fund category, which includes:

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(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type shall be subdivided for operational purposes into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(C) The other special revenue funds consist of money deposited in the state treasury from private sources, including trust income, that is used for the operation of state government and money used to defray reimbursable expenditures.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

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(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the *higher education* funds, which include:

(i) the current fund, which accounts for moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system *and postsecondary vocational-technical centers*. The financial activities of the current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system *and postsecondary vocational-technical centers*;

(iii) the endowment fund, which accounts for moneys deposited in the state treasury by the Montana university system *and postsecondary vocational-technical centers* wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

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(iv) the annuity and life income fund, which accounts for moneys deposited in the state treasury by the Montana university system *and postsecondary vocational-technical centers* under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system *or postsecondary vocational-technical center* binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system *and postsecondary vocational-technical centers* for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for moneys deposited in the state treasury wherein the Montana university system *or a postsecondary vocational-technical center* acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the *higher education* funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the *higher education* funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section."

Section 2. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. The loan must be repaid before the end of the fiscal year unless it is extended under the criteria of subsection (3) or by specific

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legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds; or

(iii) receipts due to the loan fund.

(4) These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved. Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(5) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(6) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system *and postsecondary vocational-technical centers* must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102."

Approved March 22, 1985.

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CHAPTER NO. 137

[SB 133]

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW AND ACCEPT PLANS, SPECIFICATIONS, AND COST ESTIMATES PERTAINING TO STATE BUILDING PROJECTS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and *accept* all plans, *specifications, and cost estimates* prepared by architects *or consulting engineers;*

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to *accepted* plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction,

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repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 138

[HB 526]

AN ACT TO REQUIRE APPLICANTS FOR GENERAL RELIEF TO FIRST PURSUE OTHER PUBLIC ASSISTANCE PROGRAMS; AMENDING SECTION 53-3-204, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-204, MCA, is amended to read:

"53-3-204. Eligibility for general relief — investigation of resources — eligibility for other public assistance. *(1)* An applicant for general relief assistance, including medical care and hospitalization, shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life. Assistance shall be provided to meet a minimum subsistence compatible with decency and health.

(2) General relief is available to a recipient to the extent such relief is not duplicative of resources or benefits reasonably available to the recipient.

(3) If other federal or state programs of assistance are reasonably available to meet the needs of the household of which he is a member, the applicant must apply for eligibility in those programs before general relief will be provided to that household. A household may be provided general relief if, and during the time period that, the applicant pursues available administrative appeals for other reasonably available assistance programs to the final administrative appeal level. Such interim general relief must be repaid to the department or offset from lump sums or retroactive payments of

other programs of assistance for which the applicant becomes eligible for the same period of time that the general relief is provided."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** (1) This section and section 2 are effective on passage and approval, except that no rule promulgated to implement section 1 may be effective prior to July 1, 1985.

(2) Section 1 is effective July 1, 1985.

Approved March 22, 1985.

CHAPTER NO. 139

[HB 568]

AN ACT SETTING A 7-DAY CREDIT LIMITATION ON SALES OR DELIVERIES OF CIGARETTES OR OTHER TOBACCO PRODUCTS FROM A WHOLESALER TO A RETAILER; PROVIDING THAT A VIOLATION OF THE CREDIT LIMIT IS GROUNDS FOR REVOCATION OF A LICENSE OR PERMIT TO SELL SUCH PRODUCTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Seven-day credit limitation.** No sale or delivery of cigarettes or other tobacco products may be made to any retailer except for cash paid within 7 business days after the delivery thereof. No wholesaler may extend more than 7 business days' credit on account of such cigarettes or other tobacco products to a retailer, and no retailer may accept or receive delivery of cigarettes or other tobacco products without agreement to pay in cash therefor within 7 business days from delivery thereof. A correctly dated check which is honored upon presentment must be considered as cash within the meaning of this section. Any extension or acceptance of credit in violation of this section is cause for the license or permit of any wholesaler or retailer involved in the violation to be suspended or revoked, as determined by the department in its discretion.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 16, chapter 10, and the provisions of Title 16, chapter 10, apply to section 1.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1985.

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CHAPTER NO. 140

[SB 16]

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO HEALTH, SOCIAL SERVICES, AND TRANSPORTATION; AMENDING SECTIONS 50-5-226, 50-5-301, 50-5-302, 50-37-102, 50-37-107, 50-37-108, 50-38-106, 50-60-101, 50-63-305, 53-2-706, 53-30-205, 60-2-202, 61-3-701, AND 61-3-431, MCA; AND REPEALING SECTION 53-24-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care facilities. (1) A personal-care facility may not have as a resident a person who is:

(a) in need of medical or physical restraints;

(b) nonambulatory or bedridden;

(c) totally incontinent; or

(d) less than 18 years of age.

(2) The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, his physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited by subsection (1);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection *(2)*(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident."

Section 2. Section 50-5-301, MCA, is amended to read:

"50-5-301. (Temporary) When certificate of need is required. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health

care facility, that exceeds the expenditure thresholds established in or pursuant to subsection (5). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility by 10 beds or 10%, whichever is less, in any 2-year period through:

(i) an increase or decrease in the total number of beds;

(ii) a redistribution of beds among various categories; or

(iii) a relocation of beds from one physical facility or site to another;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $100,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person to acquire an existing health care facility if:

(i) the person has failed to submit the notice of intent required by 50-5-302(2); or

(ii) the department finds within 30 days after it receives the notice of intent required by 50-5-302(3) that the acquisition will result in a change in the services or bed capacity of the facility;

(f) the construction, development, or other establishment of a health care facility which did not previously exist or which is being replaced; or

(g) the expansion of the geographical service area of a home health agency.

(2) For purposes of this section:

(a) "obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1;

(b) a health maintenance organization is to be considered a health care facility except to the extent exempted from certificate of need requirements as prescribed in rules adopted by the department.

(3) A proposed change in a project associated with a capital expenditure under subsection (1)(a) or (1)(b) for which the department has previously issued a certificate of need requires subsequent certificate of need review

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if the change is proposed within 1 year after the date the activity for which the capital expenditure was granted a certificate of need is undertaken. As used in this subsection, a "change in project" includes but is not limited to any change in the bed capacity of a health care facility as described in subsection (1)(b) and the addition or termination of a health care service.

(4) If a person acquires an existing health care facility without a certificate of need and proposes to change, within 1 year after the acquisition, the services or bed capacity of the health care facility, the proposed change requires a certificate of need if one would have been required originally under subsection (1)(e).

(5) (a) Expenditure thresholds for certificate of need review are established as follows:

(i) For acquisition of equipment, the expenditure threshold is $500,000.

(ii) For construction of health care facilities, the expenditure threshold is $750,000.

(b) The department may by rule establish thresholds higher than those established in subsection (5)(a) if necessary and appropriate to accomplish the objectives of this part. **(Repealed effective July 1, 1987—sec. 13, Ch. 329, L. 1983.)"**

Section 3. Section 50-5-302, MCA, is amended to read:

"50-5-302. (Temporary) Notice of intent — application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of notices of intent and applications;

(b) the scheduling and consolidation of reviews of similar proposals;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of *50-5-309*;

(d) the format of public informational hearings and reconsideration hearings; and

(e) the establishment of batching periods for certificate of need applications for new beds, establishment of new services, and replacement of health care facilities.

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(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall submit to the department and the appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. The letter of intent must be placed in the appropriate batch, if any. After expiration of the challenge period following the batching period in which the letter of intent was submitted or, if no batching is required, after receipt of the letter of intent, the department shall send the person an application form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304.

(4) Within 15 calendar days after receipt of the application, the department shall determine whether it is complete. If, after the 15 days, the application is found incomplete, the department shall request the necessary additional information within 5 working days. Upon receipt of the additional information from the applicant, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15-day period, the application shall be deemed to be complete. If the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch.

(5) After all applications in the current batch have been designated complete or, if an application does not require batching, after it is designated complete, notification must be sent to the applicants and all other affected persons regarding the department's projected time schedule for review of the applications. The review period for an application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant or, if the application has been batched, by all applicants in the batch. All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other. During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period. If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision. **(Repealed effective July 1, 1987—sec. 13, Ch. 329, L. 1983.)"**

Section 4. Section 50-37-102, MCA, is amended to read:

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"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit *issued under 50-37-107* at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events."

Section 5. Section 50-37-107, MCA, is amended to read:

"50-37-107. Supervised public display of fireworks authorized. (1) The state fire marshal or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the *city, town, or county* in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the *state fire marshal or the* chief of the fire department or other officer designated by the governing body of the *city, town, or county* after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable."

Section 6. Section 50-37-108, MCA, is amended to read:

"50-37-108. Damage indemnity bond required for public display. The *state fire marshal or the* governing body of the *city, town, or county* shall require a bond *considered* adequate by the *state fire marshal or governing body* from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors."

Section 7. Section 50-38-106, MCA, is amended to read:

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"**50-38-106. General penalty.** Any person or association of persons violating any of the provisions of this chapter shall be punished by imprisonment in the *state prison* not exceeding 5 years, by fine not exceeding $5,000, or by both such fine and imprisonment."

Section 8. Section 50-60-101, MCA, is amended to read:

"**50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the *department* may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

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(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(12) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(13) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 9. Section 50-63-305, MCA, is amended to read:

"50-63-305. Fire marshal authorized to administer oaths. For the purpose of this chapter, the state fire marshal or a deputy fire marshal is authorized to administer an oath to a person appearing as a witness in a proceeding investigating a violation of the laws relating to fires."

Section 10. Section 53-2-706, MCA, is amended to read:

"53-2-706. Disqualification from public assistance — right of appeal. (1) If the departments or their authorized designees determine that a person required to participate in the program has failed or refused to do so or has failed to comply with the rules established under 53-2-707, that person, upon written notice by one of the departments or its authorized designee, shall be disqualified from receiving AFDC payments. The termination of AFDC payments for any person may not affect AFDC payments or any other form of public assistance received by other members of the same household.

(2) Upon written notification of disqualification, an affected person may appeal to:

(a) the board for a fair hearing, pursuant to Title 53, chapter 2, part 6; or

(b) the department of labor and industry for redress under the WIN adjudication process, pursuant to29 CFR part 56 and 45 CFR part 1398."

Section 11. Section 53-30-205, MCA, is amended to read:

"53-30-205. Youth forest camps and work programs. In the case of a youth forest camp, a work program shall be provided by the department of *state lands* and shall be carried out with cooperation between that department and the camp superintendent."

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Section 12. Section 60-2-202, MCA, is amended to read:

"60-2-202. Duties of department. The department shall:

(1) maintain and preserve the records of the commission in its office at *Helena*;

(2) file and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission;

(3) prepare and submit to the governor on or before the 15th day of each month a report of work constructed, under construction, and proposed for construction; the progress made during the preceding month; and recommendations for improvements and their estimated costs."

Section 13. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the division. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201, *15-8-202*, or 15-24-301 or the payment of the light vehicle license fee as provided by 61-3-532, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the *certificate* entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the division. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 14. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502,

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61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of his own farming operations are exempt from this section."

Section 15. **Repealer.** Section 53-24-205, MCA, is repealed.

Approved March 22, 1985.

CHAPTER NO. 141

[SB 35]

AN ACT DEFINING SUBWAREHOUSE; REVISING THE DEFINITION OF WAREHOUSE; ESTABLISHING AN ANNUAL LICENSE FEE FOR A BEER WHOLESALER AND TABLE WINE DISTRIBUTOR SUBWAREHOUSE; AMENDING SECTIONS 16-1-106 AND 16-4-501, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

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(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Rules" means rules published by the department pursuant to this code.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of such beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

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(20) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(21) "Warehouse" means a building or structure *located in Montana* owned or operated by a licensed *beer* wholesaler *or table wine distributor* for the receiving, storage, and distribution of beer *or table wine* as permitted by this code.

(22) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; *each subwarehouse, $400;*

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

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(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

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(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Authority to proceed with rulemaking.** The department of revenue may initiate rulemaking proceedings under section 3 on or after passage and approval of this act, but no rules under section 3 may be made effective prior to the effective date of sections 1 and 2.

Section 5. **Effective dates.** (1) Sections 1 and 2 and this subsection (1) are effective July 1, 1985.

(2) Sections 3 and 4 and this subsection (2) are effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 142

[SB 42]

AN ACT ESTABLISHING SPECIFIC PROCEDURES FOR DETERMINING A STATE INDIVIDUAL INCOME TAX NET OPERATING LOSS DEDUCTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Net operating loss — computation.** (1) A net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) Additions to loss include:

(i) that portion of the federal income tax and motor vehicle fee allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a trade or business; and

(ii) wages and salaries allowed as a business deduction under 15-30-111(5).

(b) Reductions in the loss include:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

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(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended.

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to section 1.

Approved March 22, 1985.

CHAPTER NO. 143

[SB 68]

AN ACT CLARIFYING THE EXCEPTIONS TO THE PROHIBITION ON THE SALE OF BABY ANIMALS; AMENDING SECTIONS 81-8-401 AND 81-8-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-401, MCA, is amended to read:

"81-8-401. Certain dealings in baby animals unlawful. (1) *Except as provided in subsection (2), it* is unlawful for any person, firm, or corporation to:

(a) sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under 3 weeks of age, or rabbits under 2 months of age, as pets, toys, premiums, or novelties;

(b) color, dye, stain, or otherwise change the natural color of baby chickens, ducklings, or other fowl or rabbits; or

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(c) bring or transport the same into the state.

(2) This section shall not be construed to prohibit the sale, dyeing, staining, or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl or such rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes of breeding and raising."

Section 2. Section 81-8-402, MCA, is amended to read:

"81-8-402. Penalties. Violation of 81-8-401 is a misdemeanor and any person, firm, or corporation, other than *one excepted in 81-8-401(2)*, violating any of the provisions thereof is, upon conviction, subject to a fine not exceeding the sum of $100 or imprisonment for a period not exceeding 30 days, or both."

Approved March 22, 1985.

CHAPTER NO. 144

[SB 84]

AN ACT ALLOWING SCHOOL DISTRICT TRUSTEES TO ACQUIRE REAL AND PERSONAL PROPERTY BY LEASE-PURCHASE AGREEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Trustees' authority to acquire property by lease-purchase agreement.** The trustees of a district may acquire real and personal property by an agreement to lease with an option to purchase. If real property is acquired, the trustees shall comply with 20-6-603.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20.

Approved March 22, 1985.

CHAPTER NO. 145

[SB 85]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO ESTABLISH A CRIMINAL INTELLIGENCE INFORMATION SECTION WITHIN ITS CRIMINAL INVESTIGATION BUREAU; AMENDING SECTION 44-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Creation of criminal intelligence information section — advisory council.** (1) The department of justice may create within the criminal investigation bureau a criminal intelligence information section.

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(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the criminal investigation bureau or any of its sections.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The criminal investigation bureau shall provide staff and support services for the advisory council.

Section 2. **Definitions.** In [sections 2 through 8] the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in [section 1].

(2) "Section" means the criminal intelligence information section provided for in [section 1].

Section 3. **Duties of section.** The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by [sections 2 through 8] and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

Section 4. **Section supervisor and personnel.** (1) The chief of the criminal investigation bureau of the department of justice shall designate a section supervisor.

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(2) The criminal investigation bureau may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

Section 5. **Functions of advisory council.** The advisory council shall:

(1) recommend general policies for the operation of the section;

(2) recommend the approval or denial of an application from an eligible agency for participation in the section;

(3) recommend the suspension of a participant agency for due cause; and

(4) recommend, if appropriate, the reinstatement of a suspended participant agency.

Section 6. **Participating agencies.** (1) Agencies eligible for participation in the section are:

(a) municipal police departments;

(b) sheriff's departments; and

(c) sections of the criminal investigation bureau of the department of justice.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under [sections 2 through 8].

Section 7. **Protection of individual privacy.** The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to [section 8] and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with [sections 2 through 8] and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

Section 8. **Section standards and procedures.** The attorney general, in conjunction with the criminal investigation bureau and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with [sections 2 through 8] by the section and must include safeguards of individual privacy rights as provided in the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

Section 9. Section 44-5-102, MCA, is amended to read:

"**44-5-102. Purpose.** The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in *confidential and nonconfidential* criminal justice information *collection, storage, and dissemination.*"

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Section 10. **Codification instruction.** Sections 2 through 8 are intended to be codified as an integral part of Title 44, chapter 5, and the provisions of Title 44, chapter 5, apply to sections 2 through 8.

Section 11. **Effective date.** This act is effective July 1, 1985.

Approved March 22, 1985.

CHAPTER NO. 146

[SB 131]

AN ACT TO ALLOW THE ENCUMBRANCE AT FISCAL YEAREND OF APPROPRIATIONS FOR BUILDING REPAIR, MAINTENANCE, AND RENOVATION PROJECTS; AMENDING SECTION 17-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-302, MCA, is amended to read:

"**17-7-302. Encumbrance of fiscal yearend obligations.** *(1)* Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created.

(2) For the purposes of encumbering appropriations under subsection (1), a valid obligation includes a written interagency or intra-agency agreement with the department for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2.

(3) Appropriations encumbered under the provisions of subsection (2) that remain unexpended at the end of the next fiscal year or at the end of the biennium, whichever occurs first, revert to the fund from which they were originally appropriated."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

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CHAPTER NO. 147

[SB 138]

AN ACT TO ELIMINATE THE PROVISION ALLOWING INDIVIDUAL SURETIES FOR STATE PUBLIC WORKS PROJECTS; AMENDING SECTION 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-201, MCA, is amended to read:

"**18-2-201. Bonding requirements.** (1) *Except as provided in subsection (4), whenever* any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

(a) faithfully perform all of the provisions of such contract;

(b) pay all laborers, mechanics, subcontractors, and materialmen; and

(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

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(4) Notwithstanding the provisions of subsections (1) and (2) above, any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 148

[SB 157]

AN ACT AUTHORIZING THE FORFEITURE OF AN ANIMAL BY AN OWNER CONVICTED OF MISTREATING OR NEGLECTING IT; ALLOWING THE IMPOSITION OF REASONABLE VETERINARY FEES; AMENDING SECTION 45-8-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"**45-8-211. Cruelty to animals.** (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles or promoting, sponsoring, conducting, or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. *If such person is the owner, he may be required to forfeit to the county in which he is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.*

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(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected."

Approved March 22, 1985.

CHAPTER NO. 149

[SB 190]

AN ACT TO PERMIT LICENSED MONTANA BREWERS TO PROVIDE, WITHOUT CHARGE, ON THEIR LICENSED PREMISES, BEER MANUFACTURED ON THE PREMISES, FOR CONSUMPTION ON THE PREMISES; AMENDING SECTIONS 16-3-213 AND 16-3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-213, MCA, is amended to read:

"16-3-213. Brewers not to retail beer — original package exception. It shall be unlawful for any brewer or breweries to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail, *or from providing, without charge, their products for consumption on their licensed premises.*"

Section 2. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers. *(1)* Subject to the limitations and restrictions contained in this code, any brewer duly licensed as such by the United States of America who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, shall be licensed by the department, in accordance with the provisions of this code and such rules as may be prescribed by the department, to:

(a) sell and deliver beer to:

(i) a vendor;

(ii) any licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide, without charge, its own products for consumption on its licensed premises; or

(c) do any one or more of such acts of sale and delivery of beer.

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(2) No additional license fee may be imposed on a brewery providing, without charge, its own products on its licensed premises for consumption on the premises."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 150

[HB 181]

AN ACT TO ALLOW COLLECTION OF BOTH CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF THE MONTANA HAZARDOUS WASTE ACT OR OF A RULE, ORDER, OR PERMIT ISSUED PURSUANT TO IT; AMENDING SECTION 75-10-417, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-417, MCA, is amended to read:

"**75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; *or*

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1985.

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CHAPTER NO. 151

[HB 289]

AN ACT CHANGING THE NAME OF THE BOULDER RIVER SCHOOL AND HOSPITAL TO THE MONTANA DEVELOPMENTAL CENTER; AMENDING SECTIONS 50-19-204, 53-1-202, 53-1-402, 53-6-303, 53-20-102, 53-20-131, 53-20-214, 53-20-501, 53-20-502, AND 53-30-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-19-204, MCA, is amended to read:

"50-19-204. Department and Montana developmental center to furnish assistance when requested. (1) The department and the staff of the *Montana developmental center* shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the *Montana developmental center.*

(3) The department may determine procedures for coordination with the *Montana developmental center* in providing the services and assistance required in this part."

Section 2. Section 53-1-202, MCA, is amended to read:

"53-1-202. Institutions in department. (1) The following institutions are in the department:

(a) Montana state hospital;

(b) Montana veterans' home;

(c) State prison;

(d) Mountain View school;

(e) Pine Hills school;

(f) *Montana developmental center*;

(g) Montana center for the aged;

(h) Swan River youth forest camp;

(i) Eastmont human services center;

(j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

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(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 3. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Montana state hospital;

(2) *Montana developmental center*;

(3) Montana veterans' home;

(4) Montana center for the aged; and

(5) Eastmont human services center."

Section 4. Section 53-6-303, MCA, is amended to read:

"53-6-303. Transfer of patients from Galen to mental institution. A mentally retarded or mentally ill person residing at the Galen campus facility of the Montana state hospital may be transferred to the Warm Springs campus facility of the Montana state hospital, the Montana center for the aged, or the *Montana developmental center* with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

Section 5. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.

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(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a licensed medical doctor; or

(b) a person who has been certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of institutions.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the *Montana developmental center* and the Eastmont human services center. The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.

(10) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."

Section 6. Section 53-20-131, MCA, is amended to read:

"53-20-131. Placement in nonstate facility. (1) If a person is admitted to a residential facility under the provisions of this part and is eligible for hospital care, treatment, or habilitation by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the *Montana developmental center*

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with respect to detention, custody, transfer, and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state if the out-of-state facility agrees to receive the person. No such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential facility out of Montana under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health."

Section 7. Section 53-20-214, MCA, is amended to read:

"**53-20-214. Certain transfers of funds authorized.** Funds appropriated to the department of institutions, Montana state hospital, or *Montana developmental center* may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation."

Section 8. Section 53-20-501, MCA, is amended to read:

"**53-20-501. Primary function of Montana developmental center and Eastmont human services center.** The primary functions of the *Montana developmental center* and the Eastmont human services center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons."

Section 9. Section 53-20-502, MCA, is amended to read:

"**53-20-502. Location of and services provided by Eastmont human services center.** The mental retardation center at Glendive is the Eastmont human services center for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at *the Montana developmental center*. However, the center may not be a duplication of *the Montana developmental center* but shall be an extension thereof."

Section 10. Section 53-30-211, MCA, is amended to read:

"**53-30-211. Transfer of child to other facility or institution — notice.** (1) The department of institutions upon recommendation of the

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superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to the Montana state hospital or *Montana developmental center* and unless medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

Section 11. **Name change in newly enacted material.** Any reference to the "Boulder River school and hospital" made in new material enacted by the 49th legislature means the Montana developmental center.

Section 12. **Extension of authority.** Any existing authority of the department of institutions and the mental disabilities board of visitors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1985.

CHAPTER NO. 152

[HB 299]

AN ACT TO ALLOW CERTAIN COUNTY PRINTING CONTRACTS TO BE AWARDED TO PRINTING ESTABLISHMENTS NOT WITHIN THE COUNTY IF A RESPONSIBLE NONRESIDENT BID IS MORE THAN 5 PERCENT LOWER THAN RESIDENT BIDDERS; AMENDING SECTIONS 7-5-2411 AND 7-5-2412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2411, MCA, is amended to read:

"7-5-2411. County printing contract. (1) Except as provided in subsection (2), the county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be one that is published in the county and of general bona fide and paid circulation with the second-class mailing privilege and has been published continuously as such at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) (a) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class, the county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified

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newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county.

(b) The contract *for printed forms, materials, and supplies referred to in subsection (2)(a)* or one separated under subsection (2)*(c)* shall be let*:*

(i) to a commercial printing establishment or establishments, as the case may be, which shall have been in business in the county for at least 1 year *and whose competitive bid is not more than 5% higher than that of the lowest responsible commercial printing establishment bidder doing business outside the county; or*

(ii) if no establishment qualifies under subsection (2)(b)(i), to the lowest responsible commercial printing establishment bidder.

(c) The board of county commissioners for counties of the first class may award separate contracts for printed forms, materials, and supplies required by the counties. The separate contracts may be awarded on an annual basis or may be awarded for a specific printing job.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing."

Section 2. Section 7-5-2412, MCA, is amended to read:

"7-5-2412. Details relating to printing contract. (1) The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work. The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract.

(2) Nothing in this part shall be construed so as to compel the acceptance of unsatisfactory work.

(3) Such contract for printing shall extend for a period of not more than 2 years. *Any* printing establishments *doing business in the county* which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor."

Approved March 22, 1985.

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CHAPTER NO. 153

[HB 337]

AN ACT PROVIDING CERTAIN LIMITATIONS ON THE PAYMENT OF BENEFITS UPON THE DEATH OF A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHOSE DEATH WAS KNOWINGLY, PURPOSELY, OR INTENTIONALLY CAUSED BY HIS BENEFICIARY; AMENDING SECTION 19-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitations on payment of benefits if beneficiary causes member's death.** (1) If a member's beneficiary is convicted of knowingly, purposely, or intentionally causing the member's death, the beneficiary is not entitled to receive benefits as the member's beneficiary, and, except as provided in subsection (2), the benefits must be payable as provided in 19-3-1302.

(2) In lieu of the payment of benefits as provided in subsection (1), the board may grant a survivorship allowance in the amount provided for in 19-3-1205 to the member's surviving next of kin other than the beneficiary who caused the member's death. Determination of the surviving next of kin must be made according to the order provided in 19-3-1302(2).

Section 2. Section 19-3-1204, MCA, is amended to read:

"**19-3-1204. Survivorship allowance elected by beneficiary.** *(1)* A beneficiary eligible to receive a death benefit may elect, by written application, a survivorship allowance instead, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of creditable service.

(b) The beneficiary is a natural person of legal age.

(c) The beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit.

(2) The conditions listed in subsection (1) do not apply to a survivorship allowance granted under [section 1]."

Section 3. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to section 1.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

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CHAPTER NO. 154

[HB 361]

AN ACT PERMITTING A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO DESIGNATE AS HIS BENEFICIARY A CHARITABLE ORGANIZATION OR A TRUST FOR THE BENEFIT OF A NATURAL LIVING PERSON; AMENDING SECTIONS 19-3-1301 AND 19-3-1302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1301, MCA, is amended to read:

"19-3-1301. Designation of beneficiary. The beneficiaries of a member shall be such *natural* persons, *charitable organizations, or trusts for the benefit of natural living persons* as the member shall designate in the appropriate written application. A member may revoke such designation and name different beneficiaries by filing written notice with the board."

Section 2. Section 19-3-1302, MCA, is amended to read:

"19-3-1302. Effect of no designation. (1) If no living beneficiary, *existing charitable organization, or natural living person who is the beneficiary of a trust* is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of said survivor's estate, share and share alike.

(2) Payment shall be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated.

(4) The payment shall be in full and complete discharge and acquittance of the board and system on account of said death."

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Section 3. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 155

[HB 362]

AN ACT PROVIDING FOR RENEWAL OF CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED ISSUED UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-302 AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. *(1)* If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(10)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 2. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

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(iii) problems and objections raised by other federal and state agencies and interested groups; *and*

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a time limit as provided in subsection (4); *and*

(d) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) *(a)* The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in (b) or (c) of 75-20-104(10) that is more than 30 miles in length, *construction must be completed within* 10 years.

(ii) For a facility as defined in (b) or (c) of 75-20-104(10) that is 30 miles or less in length, *construction must be completed within* 5 years.

(iii) For a facility as defined in (a) of 75-20-104(10), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with subsection (4)(c) or [sections 3 through 5], a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit *may* be extended for *a reasonable period* upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction *under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii).* Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 3. **Certificate renewal — application — contents — filing fee.** (1) Any certificate holder for a facility as defined in 75-20-104(10)(a)(i) may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department and department of health a joint application in such form as the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and such other information as the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

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(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million.

Section 4. **Renewal study.** (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department of health and the board of health, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). A copy of any decision, opinion, order, certification, or permit must be served on the department and the board and must be used as part of their decisionmaking process.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original board findings and conditions have been or need to be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

Section 5. **Certificate renewal hearing — decision.** (1) The board shall follow the provisions of 75-20-218 through 75-20-222 in making decisions on certificate renewals.

(2) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying

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the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.

(3) The board may not renew a certificate either as proposed by the applicant or as modified by the board unless it finds and determines the criteria in 75-20-301 and 75-20-503, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact.

Section 6. **Codification instruction.** Sections 3 through 5 are intended to be codified as an integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to sections 3 through 5.

Section 7. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1985.

CHAPTER NO. 156

[HB 432]

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY SPECIAL EDUCATION COOPERATIVES DIRECTLY FROM THE STATE SPECIAL REVENUE FUND FOR STATE EQUALIZATION AID; AMENDING SECTION 20-7-451, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-451, MCA, is amended to read:

"20-7-451. Authorization to create full service special education cooperatives — special funding provisions. (1) A school district may contract with one or more other school districts to establish a cooperative to perform all special education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services including but not limited to janitorial and communication services.

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(3) The superintendent of public instruction may *pay* directly to a cooperative the *approved allowable* costs for contracted special education services *from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of such payments must be within the limit set by the legislature for approved special education budgets.*"

Approved March 22, 1985.

CHAPTER NO. 157

[HB 524]

AN ACT TO ALLOW THE COMMISSIONER OF STATE LANDS TO LIMIT OVERRIDING ROYALTIES AND PAYMENTS OUT OF PRODUCTION FROM STATE OIL AND GAS LEASES; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitation on overriding royalties and payments out of production.** (1) No person, partnership, or association may enter into an agreement which in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the commissioner at any time upon a determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

(a) proper and timely development may be retarded;

(b) continued operation of the lease may be impaired; or

(c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee.

Section 2. **Filing of prior agreements.** The board of land commissioners may require that an agreement which created overriding royalties or payments out of production of oil and gas from state oil and gas leases prior to the effective date of this act be filed by the lessee with the department of state lands during the 30-day period following the next anniversary date of the lease.

Section 3. **Extension of authority.** Any existing authority of the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 77, chapter 3, part 4, and the provisions of Title 77, chapter 3, part 4, apply to section 1.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Applicability.** Section 1 does not apply to overriding royalties or payments out of production agreements entered into before the effective date of this act.

Approved March 22, 1985.

CHAPTER NO. 158

[HB 463]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO THE MONTANA CONSTITUTION TO REPEAL ARTICLE XIII, SECTION 3, THEREOF, WHICH REQUIRES THE LEGISLATURE TO CREATE A SALARY COMMISSION TO RECOMMEND COMPENSATION FOR THE JUDICIARY AND ELECTED MEMBERS OF THE LEGISLATIVE AND EXECUTIVE BRANCHES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Article XIII, section 3, of the Constitution of the State of Montana is repealed.

Section 2. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 4, 1986, by printing on the ballot the full title of this act and the following words:

☐ FOR abolishing the Montana salary commission.

☐ AGAINST abolishing the Montana salary commission.

Approved March 20, 1985.

CHAPTER NO. 159

[SB 15]

AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN SPECIAL VEHICLE LICENSE LAWS; AMENDING SECTIONS 10-2-301 THROUGH 10-2-303, 49-4-304, AND 61-3-446, MCA; REPEALING SECTION 61-3-443, MCA; AND RENUMBERING SECTIONS 10-2-301 THROUGH 10-2-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-301, MCA, is amended to read:

"10-2-301. Special license plates — disabled veterans. (1) Any person who is a veteran of the armed services of the United States and

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100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW-rated capacity shall be provided with specially inscribed license plates upon payment of a fee of $5 for such automobile or truck and upon proof of 100% service-connected disability.

(2) The motor vehicle division shall assign to each veteran qualified under subsection (1) who applies according to the rules of the division a registration designation bearing the letters and character "DV-" followed by *three or four consecutive numbers*, and the division shall issue to the disabled veteran two special license plates bearing the inscription assigned to him.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the division."

Section 2. Section 10-2-302, MCA, is amended to read:

"10-2-302. Disabled veterans' plates nontransferable. The *special* license *plates for disabled veterans* issued pursuant to *[*10-2-301*]* *are* not transferable."

Section 3. Section 10-2-303, MCA, is amended to read:

"10-2-303. Disabled veterans' plates limited to one automobile or truck. No disabled veteran is entitled to *special* license plates *for disabled veterans* under *[*10-2-301*]* for more than one passenger automobile or one truck up to and including three-quarter ton GVW-rated capacity."

Section 4. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed. (1) The division of motor vehicles shall provide a special license plate *under 61-3-445* or *a* card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate shall be affixed to the vehicle according to 61-3-301, or the card shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person in a vehicle other than the one to which his special license plate is affixed.

(2) Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

(3) The card must bear a representation of a wheelchair as the symbol of a handicapped person."

Section 5. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under *[10-2-301]*, 61-3-444, or 61-3-445 disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle."

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Section 6. **Repealer.** Section 61-3-443, MCA, is repealed.

Section 7. **Codification instruction.** Sections 10-2-301 through 10-2-304, MCA, are intended to be renumbered and codified as an integral part of Title 61, chapter 3, part 4.

Approved March 25, 1985.

CHAPTER NO. 160

[SB 49]

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE AND THE STATE AUDITOR TO COORDINATE COLLECTION OF DELINQUENT TAXES AND OTHER FUNDS OWED TO THE STATE BY OFFSETTING THE AMOUNT DUE TO THE TAXPAYER OR OTHER PERSON FROM A STATE AGENCY; AND TO CLARIFY THE USE OF COMMERCIAL COLLECTION AGENCIES; AMENDING SECTIONS 17-4-105 AND 20-25-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to collect tax — offset — hearing.** (1) The department shall collect taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department must provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department intent to file a claim on behalf of a taxpayer. A request for hearing must be made within 30 days of the date of the notice and such hearing, if requested, must be held within 20 days.

Section 2. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the department, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department provided the department may not exercise this right of offset until the debtor has first been notified by the department and given

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an opportunity for a hearing. The department may contract with commercial collection agencies for recovery of debts owed the state.

(2) *Upon notification by the department,* the state auditor *shall* offset any amount due a state agency from a person or entity against any amount owing such person or entity by any state agency. The state auditor *shall* deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine.

(3) If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided."

Section 3. Section 20-25-312, MCA, is amended to read:

"20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees not to exceed $10 per quarter for parking on campus;

(b) assess fines in accordance with a published schedule for violations of motor vehicle or parking regulations of each unit in an amount not to exceed $10 per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control."

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 30, part 3, and the provisions of Title 15, chapter 30, apply to section 1.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1985.

CHAPTER NO. 161

[SB 80]

AN ACT TO REVISE THE PENALTY FOR VIOLATION OF THE CHILD SAFETY RESTRAINT LAW BY REQUIRING CITATION INSTEAD OF WARNING FOR A FIRST OFFENSE; AMENDING SECTION 61-9-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-423, MCA, is amended to read:

"**61-9-423. Penalty.** Violation of 61-9-420 is punishable as follows:

(1) On initial violation a *citation* shall be issued. No penalty may be assessed if the violation of 61-9-420 is corrected within 30 days by providing *the proper court with* proof that a child safety restraint system meeting the requirements of 61-9-420 was purchased or leased and properly installed in the vehicle. If not corrected, the violation shall be punishable by a fine of not less than $10 or more than $25.

(2) Subsequent violation within 3 years is punishable by a fine of not less than $25 or more than $100."

Approved March 25, 1985.

CHAPTER NO. 162

[SB 104]

AN ACT TO AUTHORIZE THE USE OF COMPUTERIZED JURY SELECTION; AMENDING SECTIONS 3-15-404, 3-15-503, 3-15-506, 3-15-601, AND 3-15-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-404, MCA, is amended to read:

"**3-15-404. Duty of jury commissioner — jury box or computer data base.** *(1) A county jury commissioner may by order establish the use of either a jury box as provided in subsection (2) or a computer data base*

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as provided in subsection (3) as the means for selecting jurors in the county.

(2) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this *subsection.* The number of each juror shall be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall be placed in a box of ample size to permit them to be thoroughly mixed. The box shall be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon. The box shall contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

(3) If a county uses a computer data base for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized data base."

Section 2. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing — how conducted. (1) *(a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner* shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the jury commissioner shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized data base, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. A copy of the latest jury list and a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box *or the names drawn by means of the computerized random selection process.*

(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

(4) No person may be asked to serve for more than one term during any year unless all *persons on the list established under 3-15-402* have been drawn and there are no other qualified jurors available."

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Section 3. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the jury commissioner shall draw as many *jurors* as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the *jurors*, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a *juror* is drawn *who is* a resident of an area outside the area designated by the court order, that *juror's name or* number shall be returned to the jury box *or reinstated on the computer data base* and a new *juror* drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 4. Section 3-15-601, MCA, is amended to read:

"3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box *or the computer data base provided for* in 3-15-404. *If jurors are selected from the computer data base, it must be through a computerized random selection process that the judges of the district court of the county have approved in writing as the requirements for the drawing of grand juries. A copy of the latest jury list and a description of the approved computer process employed in the selection must be kept in the office of the clerk of court and be available for public inspection during normal business hours.*

(3) The list of names shall be certified and the jurors summoned in the same manner as for trial jurors. The *names or* numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box *or reinstated on the computer data base.*"

Section 5. Section 3-15-602, MCA, is amended to read:

"3-15-602. Who constitutes jury. (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the *jury commissioner* shall write their names on separate ballots and place the ballots in black capsules. The capsules shall be deposited in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the *jury commissioner* drawing the capsules from the box is unable to see the capsule he is about

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to draw. The *jury commissioner* shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn *as provided in 3-15-601(2)* and summoned to attend the court."

Approved March 25, 1985.

CHAPTER NO. 163

[SB 132]

AN ACT DIVIDING AGGRAVATED ASSAULT INTO AGGRAVATED AND FELONY ASSAULT; AMENDING SECTION 45-5-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. *A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.*"

Approved March 25, 1985.

CHAPTER NO. 164

[SB 163]

AN ACT DELETING THE RESPONSIBILITY OF THE DEPARTMENT OF COMMERCE TO PROVIDE STANDARD PETITION FORMS AND SAMPLE PETITIONS TO MUNICIPALITIES; PLACING THE RESPONSIBILITY IN THE SECRETARY OF STATE; AMENDING SECTION 7-1-4130, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4130, MCA, is amended to read:

"7-1-4130. Petition. (1) Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, it shall be

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valid if it is signed by 15% of the electors of the municipality and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated, sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the county election administrator, who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within 10 working days of the date the petition was filed, the county election administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained, and the petition may be refiled prior to the deadline for filing the petition.

(5) Within 10 days of its second filing, the county election administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.

(6) If a petition is determined adequate, the county election administrator shall:

(a) certify its adequacy and submit it to the governing body without delay;

(b) submit a copy of the petition to the attorney of the municipality.

(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.

(8) (a) The attorney for the municipality shall prepare and transmit to the governing body without delay a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not intentionally be an argument and may not intentionally be written so as to create prejudice for or against the measure.

(b) At the same time the statement of purpose is prepared, the attorney shall prepare statements of the implications of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue.

(c) Prior to an election or an official action involving a petition issue, the governing body shall publish copies of the statement of purpose and statement of implications to the procedure established in 7-1-4128.

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(9) The secretary of state shall prepare and provide each municipality with:

(a) a standard petition form;

(b) sample petition forms for initiatives, referendums, and recall elections; and

(c) sample petition forms for creation of districts.

(10) Each municipality shall make available to the public on request sample petition forms."

Approved March 25, 1985.

CHAPTER NO. 165

[SB 171]

AN ACT TO PROVIDE THAT THE APPOINTMENT OF COUNSEL TO CONDUCT A HEARING BEFORE A BOARD ALLOCATED TO THE DEPARTMENT OF COMMERCE MUST BE AT THE REQUEST OF A PARTY AND IS LIMITED TO CONTESTED CASES; AMENDING SECTIONS 37-1-121 AND 37-1-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-121, MCA, is amended to read:

"37-1-121. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) *at the request of a party,* appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a *contested case* hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director."

Section 2. Section 37-1-131, MCA, is amended to read:

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"37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel *when required* under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6)."

Section 3. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 25, 1985.

CHAPTER NO. 166

[SB 173]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRACTICE OF RADIOLOGIC TECHNOLOGY; RESTRUCTURING THE BOARD OF RADIOLOGIC TECHNOLOGISTS; DEFINING "LIMITED PERMIT TECHNICIAN"; REVISING LIMITED PERMIT-HOLDER PROCEDURES; GIVING THE BOARD ADDITIONAL RULEMAKING AUTHORITY; PROVIDING FOR ANNUAL LICENSURE; PROVIDING FOR DISCIPLINARY PROCEDURES FOR LIMITED PERMIT TECHNICIANS; AMENDING SECTIONS 2-15-1848, 37-14-102, 37-14-301, 37-14-306, 37-14-307, 37-14-310, AND 37-14-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1848, MCA, is amended to read:

"2-15-1848. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor with the consent of the senate:

(a) *one member* shall be *a radiologist* licensed to practice medicine in Montana;

(b) one member shall be a physician licensed to practice medicine in Montana who employs at least one person granted a permit issued by the board pursuant to 37-14-306;

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(c) one member shall be a person granted *a* permit issued by the board pursuant to 37-14-306;

(d) one member shall be a public member; and

(e) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-14-102, MCA, is amended to read:

"37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization *issued by the department* to *perform* x-ray *procedures on* persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to *perform* x-ray *procedures on* persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who *has qualified under the provisions of this chapter for the issuance of a license to perform* diagnostic x-ray *procedures on* persons *and who performs the following functions in connection with the diagnostic procedure:*

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment."

Section 3. Section 37-14-301, MCA, is amended to read:

"**37-14-301. Limitation of license authority — exemptions.** (1) No person may *perform* x-ray *procedures on* a person unless licensed *or granted a limited permit* under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry; *or*

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may *perform* x-ray *procedures on* persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such *procedures.*

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a *limited permit technician* under 37-14-306, *or an individual who is not licensed or authorized under another licensing act* may not perform any of the activities listed in this subsection."

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Section 4. Section 37-14-306, MCA, is amended to read:

"37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray *procedures* without endangering public health and safety. *An applicant must be required to demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination.* Permits issued under provisions of this section and 37-14-305 shall specify x-ray *procedures, defined and established by rule,* that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions *established by rule.*

(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to *unlicensed* persons to perform x-ray *procedures* when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray *procedures* without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions. *The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.*

(5) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs."

Section 5. Section 37-14-307, MCA, is amended to read:

"37-14-307. Duty to carry, display license or permit. Each radiologic technologist *or limited permit technician* shall carry *or display* his license or permit while at work. The license or permit shall be displayed on request."

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Section 6. Section 37-14-310, MCA, is amended to read:

"37-14-310. Annual renewal — fee — reissuance of license. (1) Licenses expire *annually* on the date established by rule of the department.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee."

Section 7. Section 37-14-321, MCA, is amended to read:

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist *or technician* may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist *or limited permit technician*:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or *limited permit technician or* has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical conduct, as defined by rules promulgated by the board, or has been guilty of incompetence or negligence in his activities as a radiologic technologist *or limited permit technician*;

(5) has continued to perform as a radiologic technologist *or limited permit technician* without obtaining a license or *permit or* renewal as required by this chapter."

Section 8. **Applicability.** Two-year licenses issued by the department under 37-14-310 are valid until the expiration date established by the department. Upon expiration, renewal must be done annually as provided in 37-14-310, as amended by this act.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1985.

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CHAPTER NO. 167

[SB 192]

AN ACT INCREASING FROM 10 DAYS TO 20 DAYS THE TIME FOR FILING PURCHASE MONEY SECURITY INTERESTS UNDER THE UNIFORM COMMERCIAL CODE; AMENDING SECTIONS 30-9-301 AND 30-9-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-301, MCA, is amended to read:

"30-9-301. Persons who take priority over unperfected security interests — right of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within *20* days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien."

Section 2. Section 30-9-312, MCA, is amended to read:

"30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this

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part and in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and 30-9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within *20* days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected,

whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 30-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Approved March 25, 1985.

CHAPTER NO. 168

[SB 216]

AN ACT TO GENERALLY REVISE THE LAW CONCERNING CONSUMER LOAN LICENSEES; ALLOWING FINANCIAL INSTITUTIONS TO BE LICENSED; REVISING PROVISIONS CONCERNING INTEREST ON LOANS; PROVIDING FOR A BAD CHECK CHARGE; AND AMENDING SECTIONS 32-5-103, 32-5-301, 32-5-322, 32-5-407, 32-5-501, AND 32-5-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than those provided by 31-1-107(1), except as provided in and authorized by this chapter. *A* person engaged in business as a licensed pawnbroker *may* not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all

other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(4) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

Section 2. Section 32-5-301, MCA, is amended to read:

"32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $500;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $500 but not exceeding $1,000.

(2) The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $12 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500.

(3) Charges in (1) and (2) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(4) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that

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is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(5) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(6) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(7) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(8) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection *(11)*.

(9) On any loan of money exceeding $7,500 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding.

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Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is the balance due after refund or credit is given to the borrower pursuant to subsection *(4)*.

(10) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(11) The provisions of subsections *(4)* and *(5)* do not apply to loans made under subsections *(8)* through *(10)*.

(12) The amounts of $500, $1,000, and $7,500 in subsections (1), (2), *(8)*, and *(9)* are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Section 3. Section 32-5-322, MCA, is amended to read:

"32-5-322. Deferral charge — rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under 32-5-301*(4)* as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to 32-5-301*(4)*."

Section 4. Section 32-5-407, MCA, is amended to read:

"32-5-407. Attorney fees — bad check charge. *(1)* If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of $10 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason."

Section 5. Section 32-5-501, MCA, is amended to read:

"32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges at a

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rate not in excess of the rate set forth in 32-5-301*(9)* on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301*(6)*."

Section 6. Section 32-5-506, MCA, is amended to read:

"**32-5-506. Provisions not applicable.** The provisions of subsections *(4)* and *(5)* of 32-5-301 and the provisions of 32-5-304 do not apply to open-end loans."

Section 7. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 25, 1985.

CHAPTER NO. 169

[SB 276]

AN ACT INCREASING THE TIME IN WHICH AUDIT REPORTS OF POLITICAL SUBDIVISIONS BY THE DEPARTMENT OF COMMERCE MUST BE ISSUED FROM 60 DAYS TO 120 DAYS OF COMPLETION OF FIELD WORK; AMENDING SECTION 2-7-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-514, MCA, is amended to read:

"**2-7-514. Issuance and filing of audit report.** (1) Within *120* days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

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(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and

(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s).

(2) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection."

Approved March 25, 1985.

CHAPTER NO. 170

[SB 303]

AN ACT TO CLARIFY THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO ASSESS FINES FOR VIOLATIONS OF THE FEDERAL NATURAL GAS PIPELINE SAFETY ACT; AMENDING SECTION 69-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-207, MCA, is amended to read:

"69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) *Any person* violating any safety regulation *or provision adopted under* the *Natural Gas Pipeline Safety Act of 1968, as amended, which applies to areas the commission has authority to enforce* shall be subject to a fine of not less than $100 or more than $1,000. *Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed $200,000 for any related series of violations.*

(2) In determining the amount of the penalty, the following shall be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and such other matters as justice may require.

(3) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

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(4) The commission may prescribe rules necessary to effectively administer this section."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1985.

CHAPTER NO. 171

[SB 311]

AN ACT TO PROVIDE STAGGERED TERMS FOR THE MEMBERS OF THE ADVISORY COUNCIL ON AGING; AMENDING SECTION 2-15-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-231, MCA, is amended to read:

"**2-15-231. Office of aging.** (1) There is an office of aging, headed by a coordinator of aging. The office is in the governor's office.

(2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a majority of whom must be 60 years of age or older. Members shall serve *staggered* 3-year terms *and until their successors are appointed.* Vacancies must be filled by appointment for the unexpired term. The council is allocated to the governor's office for administrative purposes only.

(3) The coordinator of aging must be appointed by the governor after consultation with the advisory council and shall serve at the pleasure of the governor.

(4) The advisory council on aging shall act as the advisory board to the coordinator on aging."

Section 2. **Initial appointments.** Notwithstanding the provision of 2-15-231 relating to 3-year terms, the terms of the initial appointees to the advisory council on aging must be staggered and unequal. The governor shall stagger the terms of the initial appointees, whose positions were effective July 18, 1983, by designating three council members to serve terms expiring July 18, 1985, four council members to serve terms expiring July 18, 1986, and four council members to serve terms expiring July 18, 1987.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1985.

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CHAPTER NO. 172

[HB 547]

AN ACT EXTENDING THE PROHIBITION AGAINST THE ADMISSIBILITY OF EVIDENCE OF A VICTIM'S SEXUAL PAST IN CASES OF SEXUAL INTERCOURSE WITHOUT CONSENT TO ALL SEXUAL CRIMES; ALLOWING THE IMPOSITION OF BOTH JAIL TIME AND A FINE AFTER A CONVICTION OF SEXUAL ASSAULT; AMENDING SECTIONS 45-5-502, 45-5-503, AND 45-5-511, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, *or both*.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 2. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission."

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Section 3. Section 45-5-511, MCA, is amended to read:

"45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

(4) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(5) If the defendant proposes for any purpose to offer evidence described in subsection (4)(a) or (4)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (4).

(6) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim."

Approved March 25, 1985.

CHAPTER NO. 173

[HB 644]

AN ACT PROVIDING FOR A PRESENTENCE INVESTIGATION OF A PERSON CONVICTED OF COMMITTING A SEX OFFENSE AGAINST A VICTIM LESS THAN 16 YEARS OLD; AMENDING SECTION 46-18-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation. No defendant convicted of *an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against*

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a victim who was less than 16 years old when the offense was committed may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court. *The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified by professional experience. No defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court* unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense."

Approved March 25, 1985.

CHAPTER NO. 174

[SB 31]

AN ACT PROVIDING FOR WAIVER OF COUNTY SURVEYOR QUALIFICATIONS WHEN THE OFFICE OF COUNTY SURVEYOR IS CONSOLIDATED WITH ANOTHER COUNTY OFFICE; PROVIDING FOR CONTRACTING WITH A PERSON WHO MEETS THOSE QUALIFICATIONS TO PERFORM DUTIES OF COUNTY SURVEYOR; AMENDING SECTION 7-4-2801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2801, MCA, is amended to read:

"**7-4-2801. Qualifications for county surveyor and deputies.** (1) *Except as provided in subsection (3), a* county surveyor shall be a professional engineer, not less than 22 years of age, who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering shall be considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1985.

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CHAPTER NO. 175

[SB 94]

AN ACT TO PROVIDE THAT THE TERM OF A PERSON APPOINTED TO FILL A VACANCY IN THE OFFICE OF JUSTICE OF THE PEACE OR CITY COMMISSIONER TERMINATES AS OF THE NEXT GENERAL ELECTION AND QUALIFICATION OF SUCCESSOR; TO CONFORM THE TERM OF APPOINTMENT OF THESE OFFICES WITH OTHER ELECTIVE OFFICES; AMENDING SECTIONS 3-10-206 AND 7-3-4317, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-206, MCA, is amended to read:

"**3-10-206. Vacancies.** If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office *until the next general election and until a successor is elected and qualified.*"

Section 2. Section 7-3-4317, MCA, is amended to read:

"**7-3-4317. Vacancies.** Vacancies in the commission shall be filled by the commission for the *period until the next general election and until a successor is elected and qualified*, but any vacancy resulting from a recall shall be filled in the manner provided in such case."

Section 3. **Effective date — applicability.** This act is effective January 1, 1986, and applies to vacancies occurring on or after January 1, 1986.

Approved March 26, 1985.

CHAPTER NO. 176

[SB 102]

AN ACT TO REVISE THE TYPE OF DOCUMENTATION REQUIRED FOR PRESENTATION OF CLAIMS AGAINST A MUNICIPALITY; AMENDING SECTION 7-6-4301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4301, MCA, is amended to read:

"**7-6-4301. Presentation of claims against municipality.** (1) All accounts and demands against a city or town must be presented to the council, duly itemized. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. No action may be maintained against the city or town for or on account of any demand or claim against the city or town until such demand or claim has first been presented to the council.

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(2) *Payment of claims against a city or town may be authorized by the council when:*

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that he has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) Any claim or demand not so presented within *the* time *provided in subsection (1)* is forever barred, and the council has no authority to allow any account or demand not so presented."

Approved March 26, 1985.

CHAPTER NO. 177

[SB 121]

AN ACT TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADMINISTER ALL FUNDS ALLOCATED TO THE DEPARTMENT FOR RESIDENTIAL ALCOHOL AND DRUG TREATMENT FOR INDIGENT YOUTHS IN NEED OF CARE, YOUTHS IN NEED OF SUPERVISION, AND DELINQUENT YOUTHS; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

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(f) apportion and allocate placement budgets to all judicial districts;

(g) seek public input on the plan prior to its adoption and implementation;

(h) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements*; and*

(i) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, youths in need of supervision, and delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations *or private organizations* to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in district youth guidance homes, shelter care programs, and foster care homes for youths committed to the department of institutions who need to be placed in such facilities. Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 26, 1985.

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CHAPTER NO. 178

[SB 141]

AN ACT EXEMPTING FROM REGULATION THE TRANSPORTATION OF A COMMODITY UNDER A CONTRACT BETWEEN A MOTOR CARRIER AND THE UNITED STATES GOVERNMENT; AMENDING SECTIONS 69-12-102 AND 69-12-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) Except as provided in 69-12-201(1)(f), (1)(g), and (2), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials,

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used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also on his way to or from his place of employment;

(k) the transportation of property by motor carrier as part of a continuous movement if such property, prior or subsequent to such part of a continuous movement, has been or will be transported by an air carrier;

(l) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(m) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security; *or*

(n) the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 2. Section 69-12-324, MCA, is amended to read:

"69-12-324. Special provisions when federal or state contract involved. (1) The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

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(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract."

Section 3. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 26, 1985.

CHAPTER NO. 179

[SB 145]

AN ACT REVISING STOCKHOLDING REQUIREMENTS, NUMBER LIMITATIONS, AND MEETINGS OF DIRECTORS OF BANKS AND TRUST COMPANIES; AMENDING SECTIONS 32-1-301, 32-1-322, 32-1-324, 32-1-325, AND 32-1-356, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation — articles of agreement. Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth:

(1) the corporate name of the proposed corporation, which shall not be the name of any other corporation theretofore granted and then doing business of a similar character in this state or any imitation of such name, provided that it shall be lawful to use the name theretofore used by any corporation previously incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and entirely out of business. No banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

(2) the name of the city or town and county in which the principal office of the corporation is to be located;

(3) the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of such shares; the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody

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of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business;

(4) the names and places of residence of the several shareholders and the number of shares subscribed by each;

(5) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

(6) the purpose for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage."

Section 2. Section 32-1-322, MCA, is amended to read:

"32-1-322. Board of directors -- qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than *three* in number, all of whom shall be stockholders *as required by 32-1-324* and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any business day before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock *as required by 32-1-324*. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election."

Section 3. Section 32-1-324, MCA, is amended to read:

"32-1-324. Director's shares of stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank *or the owning bank holding company as defined in the federal Bank Holding Company Act of 1956, as that act reads on October 1, 1985*, owning in his own right shares thereof of the par value of at least $1,000, and every

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person elected to be a director, who after such election shall cease to be the owner in his own right of the amount of such stock aforesaid or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the department of such sale or hypothecation, and such director may be removed from the office of director by the department, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the department."

Section 4. Section 32-1-325, MCA, is amended to read:

"32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least *quarterly*.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank and fix their compensation. The president shall be chosen from the board of directors.

(3) The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute book shall be kept in the office of the bank at all times and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 5. Section 32-1-356, MCA, is amended to read:

"32-1-356. Procedure for change in number of directors. (1) A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. However, the number of directors may not at any time be less than *three*.

(2) When a bank or trust company decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation

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relative to the number of directors, written or printed notice of the meeting must be deposited in the post office, addressed to each stockholder of record entitled to vote at the meeting under the articles of incorporation or amendments to them and the laws and constitution of Montana at his last known place of residence, at least 10 days previous to the date set for the holding of the meeting. In addition, the notice must be published once a week for 2 consecutive weeks in a newspaper published in the county where the principal place of business of the corporation is situated. If no newspaper is published in the county, it is not necessary to publish the notice. However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If, at the time and place specified in the notice of the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation appear in person or by proxy and vote in favor of the amendment, a certificate of the proceedings showing a compliance of the provisions of this chapter and the amendment relative to the number of directors shall be prepared, certified, and sworn to and filed with the department. The department shall, within 30 days after the receipt of the certificate, either approve or reject the amendment. The action of the department on the amendment is final. If it approves the amendment, it shall notify the bank, whereupon the certificate with the department's approval attached to it shall be filed in the office of the county clerk and recorder of the county in which the bank is situated and a certified copy of it shall be filed in the office of the secretary of state. Upon the filing of the certified copy with the secretary of state, the amendment becomes effective."

Approved March 26, 1985.

CHAPTER NO. 180

[SB 154]

AN ACT AMENDING THE SWINE ASSESSMENT THAT FUNDS THE MONTANA PORK RESEARCH AND MARKETING COMMITTEE AND AUTHORIZING THE COMMITTEE TO DETERMINE THE PERCENTAGE OF UNREFUNDED ASSESSMENTS PAID TO THE NATIONAL PORK PRODUCER COUNCIL; AMENDING SECTIONS 81-8-607 AND 81-8-610, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-607, MCA, is amended to read:

"81-8-607. Assessments. There is hereby assessed a per head levy of *0.3%* on *the sale price of* all swine sold by producers to purchasers beginning July 1, *1985*. The assessment shall be deducted and collected at the time of sale from the producer's receipt of sale and remitted to the department of livestock by the purchaser under the provisions of this part."

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Section 2. Section 81-8-610, MCA, is amended to read:

"81-8-610. Research and marketing account — sources — use — expenditures. (1) The proceeds of all assessments made, paid, and collected under this part and the proceeds from all gifts, grants, or donations to the department of livestock for research authorized by this part shall be deposited in the other special revenue funds for the use of the committee as provided in this part.

(2) The account shall be maintained for the purposes of this part and shall be separate and apart from all other accounts of the department.

(3) *A percentage* of all unrefunded assessments, *determined by the committee*, shall be paid to the national pork producer council.

(4) The committee may be assessed costs by the department for the services the department provides upon request of the committee or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of the services provided."

Section 3. **Extension of authority.** Any existing authority of the Montana pork research and marketing committee to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved March 26, 1985.

CHAPTER NO. 181

[SB 158]

AN ACT TO EXEMPT RECIPIENTS OF PUBLIC ASSISTANCE FROM THE REQUIREMENT OF AN INDEMNITY BOND FOR THE PURPOSES OF RECEIVING A DUPLICATE STATE WARRANT; AMENDING SECTION 17-8-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-306, MCA, is amended to read:

"17-8-306. Issuance of duplicate warrant. (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate", and except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required when:

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(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the amount of the lost or destroyed warrant is less than $100;

(e) it can be established that a crime has been committed and as a result of such crime that a Montana warrant has been stolen or destroyed;

(f) it can be established that a Montana warrant has been mailed to an incorrect payee;

(g) the payee is a vendor or contractor doing business with the state of Montana; *or*

(h) the payee is a recipient of public assistance under Title 53.

(3) Whenever the owner or custodian applies under the provisions of *subsection* (2)(e), (2)(f), (2)(g), *or (2)(h)*, a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), *or (2)(h)*, the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Approved March 26, 1985.

CHAPTER NO. 182

[SB 162]

AN ACT TO EXTEND THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]*."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1985.

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CHAPTER NO. 183

[SB 164]

AN ACT TO GENERALLY REVISE THE LAWS PRESCRIBING THE RESPECTIVE POWERS AND DUTIES OF THE DEPARTMENT OF ADMINISTRATION, STATE TREASURER, AND THE BOARD OF INVESTMENTS; ALLOWING THE BOARD TO HIRE ITS OWN PERSONNEL; REQUIRING THE BOARD TO KEEP CERTAIN RECORDS; AMENDING SECTIONS 2-15-1005 AND 17-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1005, MCA, is amended to read:

"2-15-1005. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes only as prescribed in 2-15-121. *However, the board may hire its own personnel and is not subject to 2-15-121(2)(d). The* board may employ an investment officer and assistant investment officer who will have general responsibility for management of the board's staff and directing investment activity. The investment officer and assistant investment officer serve at the pleasure of the board, and the board may prescribe the duties and annual salary of both.

(3) The board is composed of five members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subject of investments.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

Section 2. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The uniform investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments and the Montana economic development board in accordance with the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation. Investments by the Montana economic development board are limited to those made from the Montana in-state investment fund and for the purposes set forth in part 3.

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(2) All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments has the sole authority to invest state funds other than the Montana in-state investment fund. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(4) The board of investments shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; *and*

(e) keep an account of the total of each investment fund and of all the investments belonging to such fund and a record of the participation of each treasury fund account therein.

(5) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(6) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 3. **Extension of authority.** Any existing authority of the department of administration, board of investments, or state treasurer to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved March 26, 1985.

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CHAPTER NO. 184

[SB 166]

AN ACT ELIMINATING THE 10-DAY POSTHEARING DEADLINE FOR BOARD OF LAND COMMISSIONERS' DECISIONS ON PROPOSALS FOR EXCHANGE OF TIMBERED STATE LAND; AMENDING SECTION 77-2-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-216, MCA, is amended to read:

"77-2-216. Final order of board. *The* board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211."

Approved March 26, 1985.

CHAPTER NO. 185

[SB 175]

AN ACT TO INCREASE THE BONUS PAYMENT PER ELIGIBLE PUPIL FOR THIRD-CLASS SCHOOLS THAT CONSOLIDATE; AMENDING SECTION 20-6-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-401, MCA, is amended to read:

"20-6-401. Definitions. As used in this part, unless the context clearly indicates otherwise the following definitions apply:

(1) "Component districts" are the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" shall be the average number belonging for the current school year in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils shall be ineligible for bonus payment consideration.

(3) "Enlarged district" is the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" *for first- and second-class school districts* shall be $300 per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. *General bonus payment for*

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third-class school districts shall be $500 per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. Such payment shall be made from the state school equalization aid account.

(5) "Transportation bonus payment" will be the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district shall be entitled to the transportation bonus payment for such eligible pupil for a period of 3 years. Such payment shall be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔% state financing of the on-schedule amount for this payment shall be prorated to provide such financing for the eligible pupil."

Approved March 26, 1985.

CHAPTER NO. 186

[SB 191]

AN ACT EXTENDING FROM 5 TO 30 DAYS THE PERIOD FOR SUBMISSION BY BANKS OF CALL REPORTS; AMENDING SECTIONS 32-1-231 AND 32-1-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-231, MCA, is amended to read:

"32-1-231. Reports to department of commerce. (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report shall be transmitted to the department within *30* days after the receipt of a request or requisition for it and in a form the department may require. It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be

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furnished at the times and in the manner as may be required by the department."

Section 2. Section 32-1-235, MCA, is amended to read:

"32-1-235. Penalty for failure to make report within thirty days. If any bank neglects to make out or transmit the statements required by this chapter within *30* days after call, it shall be subject to a penalty of $20 for each day in default after the period respectively required by this chapter that it may delay to make and transmit any such statements. Should any bank delay for a period of 1 month to make out and transmit the statements and proofs of publication required by this chapter beyond the period when the same is required to be made or willfully violate any of the provisions of this chapter with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect."

Approved March 26, 1985.

CHAPTER NO. 187

[SB 193]

AN ACT TO REPEAL PROVISIONS ON EXPLOSIVES AND MANDATE THE STATE FIRE MARSHAL TO ADOPT EXPLOSIVES RULES BASED ON NATIONALLY RECOGNIZED STANDARDS; AMENDING SECTIONS 45-8-332 AND 50-3-102, MCA; AND REPEALING SECTIONS 50-38-101 THROUGH 50-38-108, 50-38-201 THROUGH 50-38-207, 50-38-211 THROUGH 50-38-215, 50-38-221 THROUGH 50-38-223, 50-38-231 THROUGH 50-38-235, AND 50-38-301 THROUGH 50-38-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-332, MCA, is amended to read:

"45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

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(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in *rules adopted by the state fire marshal pursuant to 50-3-102(3).*"

Section 2. Section 50-3-102, MCA, is amended to read:

"**50-3-102. Powers and duties of state fire marshal.** (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating

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thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for statements of witnesses given during an investigation and information that may be held in confidence under 50-63-403, the record shall be open at all times to public inspection; and

(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

(2) The state fire marshal may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The state fire marshal shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, *the state fire marshal may* maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules."

Section 3. **Repealer.** Sections 50-38-101 through 50-38-108, 50-38-201 through 50-38-207, 50-38-211 through 50-38-215, 50-38-221 through 50-38-223, 50-38-231 through 50-38-235, and 50-38-301 through 50-38-304, MCA, are repealed.

Section 4. **Extension of authority.** Any existing authority of the state fire marshal to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 26, 1985.

CHAPTER NO. 188

[SB 198]

AN ACT TO PLACE ALL PASSENGER TRAMWAY REGISTRATION FEES AND ASSESSMENTS ON THE GROSS RECEIPTS OF PASSENGER TRAMWAYS IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 23-2-714 AND 23-2-715, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-714, MCA, is amended to read:

"23-2-714. Fees. (1) The application for registration or supplemental application shall be accompanied by such annual fees as the department may fix from year to year, not to exceed the following annual fees:

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(a) passenger tramways described in subsections (5)(e) and (5)(f) of 23-2-702, $25 each;

(b) passenger tramways described in subsections (5)(c) and (5)(d) of 23-2-702, $50 each;

(c) passenger tramways described in subsections (5)(a) and (5)(b) of 23-2-702, $100 each.

(2) All fees collected by the department shall be deposited in the *state special revenue* fund."

Section 2. Section 23-2-715, MCA, is amended to read:

"23-2-715. Assessment on passenger tramway receipts. *(1)* The department of administration is hereby authorized to impose an assessment of ¼ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the *state special revenue* fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment *and the fees collected under 23-2-714* shall be used only to support the duties of the department set forth in this part."

Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved March 26, 1985.

CHAPTER NO. 189

[SB 365]

AN ACT ADDING TO THE FACTS THAT MAY BE ALLEGED TO SEEK DESIGNATION OR MODIFICATION OF A CONTROLLED GROUND WATER AREA; AMENDING SECTION 85-2-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled groundwater areas — designation or modification. (1) The board may designate or modify controlled groundwater areas as provided in this part.

(2) Designation or modification of an area of controlled groundwater use may be proposed to the board by the department on its own motion

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or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of groundwater in a groundwater area wherein there are alleged to be facts showing:

(a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within such groundwater area;

(b) that excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area;

(c) that significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area;

(d) that groundwater levels or pressures in the area in question are declining or have declined excessively; *or*

(e) that excessive groundwater withdrawals would cause contaminant migration and a degradation of groundwater quality within the groundwater area.

(3) When such a proposal is thus made, the board shall fix a time and place for a hearing, which time shall not be less than 90 days from the making of the proposal. The place for the hearing shall be within or as close as practical to the controlled groundwater area.

(4) The department shall publish a notice of the hearing, setting forth therein:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the groundwater area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) Such notice of hearing shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the groundwater area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of groundwater in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws groundwater and not merely one who uses or obtains groundwater from another who diverts, impounds, or withdraws groundwater); upon the bureau; and upon the mayor or chairman of the governing body of each

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incorporated municipality located in whole or in part within the proposed groundwater area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled groundwater area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, shall be mailed to each person at his last-known address, and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice as prescribed herein, when completed, shall be deemed to be sufficient notice of such hearing to all interested persons."

Section 2. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 26, 1985.

CHAPTER NO. 190

[HB 57]

AN ACT TO REMOVE THE DRIVER CONTROL REQUIREMENT FROM TRUCK LEASING AGREEMENTS; AMENDING SECTION 69-12-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-611, MCA, is amended to read:

"69-12-611. Leasing of power equipment. (1) All Class A, B, C, and D carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of such power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) provision that the lessee assumes full responsibility for all regulatory fees;

(e) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each power unit so leased must display in a conspicuous place on

both sides of such vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Section 2. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 26, 1985.

CHAPTER NO. 191

[HB 72]

AN ACT TO PROVIDE FOR THE REGULATION OF INTEREST RATES ON LIFE INSURANCE POLICY LOANS; AMENDING SECTIONS 33-20-109 AND 33-20-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 5] is to permit and set guidelines for life insurers to include in life insurance policies issued after October 1, 1985, a provision for periodic adjustment of policy loan interest rates.

Section 2. **Exclusions from application.** The provisions of [sections 1 through 5] do not apply to:

(1) term policies;

(2) term insurance benefits provided by rider or supplemental policy provisions; or

(3) industrial life insurance policies except as provided in 33-20-112.

Section 3. **Published monthly average defined.** For purposes of [sections 1 through 5], the "published monthly average" means:

(1) Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, incorporated; or

(2) in the event that Moody's corporate bond yield average—monthly average corporates is no longer published, a substantially similar average, established by rule of the commissioner.

Section 4. **Interest rates on life insurance policy loans.** (1) (a) Life insurance policies issued on or after October 1, 1985, may have a provision permitting policy loan interest rates as follows:

(i) a maximum interest rate of not more than 8% a year; or

(ii) an adjustable maximum interest rate established from time to time by the life insurer as permitted by [sections 1 through 5].

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(b) A life insurer is not permitted to issue policies containing variable rates of interest on policy loans under subsection (1)(a)(ii) unless the insurer also makes available policies, which may or may not be on the same plan of insurance, with fixed rates of interest on policy loans under subsection (1)(a)(i).

(2) The rate of interest charged on a policy loan made under subsection (1)(a)(ii) may not exceed the greater of:

(a) the published monthly average for the calendar month ending 2 months before the date on which the rate is determined; or

(b) the rate used to compute the cash surrender values under the policy during the applicable period plus 1% a year.

(3) If the maximum rate of interest is determined pursuant to subsection (1)(a)(ii), the policy must contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(4) The maximum rate for each policy must be determined at regular intervals that must occur at least once every 12 months, but may not occur more frequently than once in any 3-month period. At the intervals specified in the policy, the rate being charged:

(a) may be increased whenever an increase as determined under subsection (2) would increase the rate by 0.5% or more a year;

(b) must be reduced whenever a reduction as determined under subsection (2) would decrease the rate by 0.5% or more a year.

(5) The life insurer shall:

(a) notify the policyholder of the initial rate of interest on the loan at the time a cash loan is made;

(b) notify the policyholder, with respect to premium loans, of the initial rate of interest on the loan as soon as practical after making the initial loan. Notice does not have to be given to the policyholder when a further premium loan is added, except as provided in subsection (5)(c).

(c) send reasonable advance notice of any increase in the rate to policyholders with loans; and

(d) include in the notices required by this subsection (5) the substance of subsection (1) and the frequency of rate determinations as provided in subsection (3).

(6) The policy may provide that if interest on any indebtedness is not paid when due, the interest will be added to the existing indebtedness and will bear interest at the same rate as the indebtedness.

(7) The loan value of the policy must be determined in accordance with the provisions of 33-20-109, but no policy may be terminated in a policy year solely as a result of a change in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until the time at which the policy would otherwise have terminated if there had been no interest rate change during that policy year.

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(8) The substance of the pertinent provisions of subsections (1) and (3) must be set forth in the policies to which they apply.

(9) For purposes of this section, the following definitions apply:

(a) "Policy loan" includes any premium loan made under a policy used to pay one or more premiums that were not paid to the life insurer as they became due. The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after the lapse of a policy.

(b) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(c) "Policy" includes certificates issued by a fraternal benefit society and annuity contracts that provide for policy loans.

(10) No other provision of law applies to policy loan interest rates unless it is made specifically applicable to such rates.

Section 5. **Applicability to policies issued before October 1985.** The provisions of [sections 1 through 4] do not apply to any insurance contract issued before October 1, 1985, unless the policyholder agrees in writing to the applicability of such provisions.

Section 6. Section 33-20-109, MCA, is amended to read:

"33-20-109. Policy loan. (1) *Except as provided in [sections 1 through 5], there* shall be a provision that after 3 full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of such policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy loans, higher investment yield resulting from a reduction in policy loans because of the higher policy loan interest rate, and any additional income to the company resulting from the use of such higher interest rate in any manner whatsoever. These benefits to the policyholder shall be reflected through higher dividends or lower premiums, or both. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy may also provide that if interest on any indebtedness is not paid when due it shall then

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be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(2) This section shall not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies."

Section 7. Section 33-20-112, MCA, is amended to read:

"33-20-112. Reinstatement. There shall be a provision that the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, with interest *on all premiums in arrears* at a rate not exceeding 6% per annum compounded annually *and with interest on any indebtedness at a rate as provided in [sections 1 through 5]*, unless:

(1) the policy has been surrendered for its cash surrender value;

(2) its cash surrender value has been exhausted; or

(3) the paid-up term insurance, if any, has expired."

Section 8. **Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 33, chapter 20.

Approved March 26, 1985.

CHAPTER NO. 192

[HB 227]

AN ACT PROHIBITING A PERSON WITHIN A POLLING PLACE OR A BUILDING IN WHICH AN ELECTION IS BEING HELD OR WITHIN 200 FEET THEREOF FROM SOLICITING INFORMATION FROM ELECTORS AS TO HOW THEY INTEND TO VOTE OR HAVE VOTED ON CANDIDATES OR BALLOT ISSUES; AMENDING SECTION 13-35-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-211, MCA, is amended to read:

"13-35-211. Electioneering — soliciting information from electors. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within

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200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held or within 200 feet thereof may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue."

Approved March 26, 1985.

CHAPTER NO. 193

[HB 379]

AN ACT TO PROVIDE OPTIONAL PUBLICATION REQUIREMENTS FOR MINUTES OF AND CLAIMS ORDERED PAID BY BOARDS OF COUNTY COMMISSIONERS; AMENDING SECTION 7-5-2123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2123, MCA, is amended to read:

"**7-5-2123. Publication of board proceedings and annual financial statement.** (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, *in full and complete detail or in summary form or by reference, with the full and complete text made available on request*, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annually, the county clerk's annual statement of the financial condition of the county.

(2) Publication *in full, in summary, or by reference* of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1985.

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CHAPTER NO. 194

[HB 790]

AN ACT TO CLARIFY WHEN A LOAN GUARANTY IS AN UNCONDITIONAL CONTRACT FOR THE DIRECT PAYMENT OF MONEY UPON WHICH A WRIT OF ATTACHMENT MAY BE ISSUED; AMENDING SECTION 27-18-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-18-101, MCA, is amended to read:

"27-18-101. Cases in which property may be attached. (1) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; and

(b) an action based upon a statutory stockholders' liability.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money."

Approved March 26, 1985.

CHAPTER NO. 195

[HB 852]

AN ACT TO PROVIDE AN EXEMPTION FOR CERTAIN PERSONS FROM REGULATION AS PUBLIC UTILITIES; TO EXCLUDE SUCH PERSONS FROM THE DEFINITION OF "PUBLIC UTILITY"; AMENDING SECTION 69-3-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever,

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that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) telegraph or telephone service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; *or*

(c) a person exempted from regulation as a public utility as provided in [section 2]."

Section 2. **Commission may determine certain persons not a public utility.** (1) Upon application, the commission, by order, may determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control or regulation of the commission under this title, solely because such person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment or any water right described in 69-3-101:

(a) which is leased or sold or held for lease or sale to any public utility or other lessee; or

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after such person gains possession of such property following a breach of such lease or contract.

(2) Any order once issued may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of such order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party thereto for an exemption by the United States Securities and Exchange Commission, or its successor, from the federal Public Utility Holding Company Act of 1935.

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(4) A public utility, as lessee of any plant or equipment, any part of, or undivided interest in, a plant or equipment or any water right described in 69-3-101 which is subject to any lease or contract described in this section, shall comply with this title, regarding such plant, equipment or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 69, chapter 3.

Section 4. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 26, 1985.

CHAPTER NO. 196

[SB 169]

AN ACT TO ALLOW ELECTION ADMINISTRATORS THE OPTION OF CONDUCTING CERTAIN SPECIFIC ELECTIONS BY MAIL BALLOT; AMENDING SECTIONS 7-13-2236 AND 13-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statement of purpose.** The purpose of [this act] is to provide the option of conducting certain specified elections using a procedure called a "mail ballot election" and to provide the procedures therefor. The provisions of [this act] recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of [this act] further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

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(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in [section 3].

(3) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(4) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors.

Section 3. **Mail ballot election procedure.** A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) The elector shall mark the ballot at home and place it in a secrecy envelope.

(4) The elector shall then place the secrecy envelope containing his ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received prior to a specified time on election day.

(5) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(6) If the ballot so qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(7) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law.

Section 4. **Mail ballot elections not mandatory — when authorized — when prohibited.** (1) Conducting elections by mail ballot is only one option available to local officials and nothing in [this act] mandates that the procedure be used.

(2) The following elections may be conducted by mail ballot:

(a) an election in a political subdivision required to hold annual elections under 13-1-104(3), other than a school district;

(b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;

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(c) an election in a town as defined in 7-1-4111(4);

(d) an election conducted under 7-13-2236 in an unincorporated area; and

(e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election.

(3) The following elections may not be conducted by mail ballot:

(a) an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);

(b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;

(c) an election for any purpose conducted by or on behalf of a school district;

(d) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;

(e) an election involving candidates for public office, except as specifically allowed by subsections (2)(a) through (2)(c) of this section; and

(f) a special election being held in conjunction with a statutorily scheduled election.

Section 5. **General election laws to apply.** All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of [this act] or are not otherwise provided for by [this act].

Section 6. **Role of secretary of state.** In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;

(2) review written plans for the conduct of mail ballot elections as provided in [section 11]; and

(3) adopt rules consistent with [this act] to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained.

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Section 7. **How election initiated.** A proposal to conduct an election under [this act] may be initiated by either the election administrator or the appropriate governing body as provided in [sections 8 through 10].

Section 8. **Initiation by governing body.** (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of [this act].

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in [section 10], the decision to conduct an election under the provisions of [this act] is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in [section 11].

Section 9. **Initiation by election administrator.** (1) Even if no request has been received from the governing body concerned, the election administrator may conduct any election authorized by [section 4] under [this act] if, in his discretion, that would be the most economically and administratively feasible way of conducting the election in question.

(2) If he decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in [section 11] and forward a copy to the governing body concerned, together with a written statement informing it of his decision to conduct the election by mail ballot and the reasons therefor and the right of the governing body to object under [section 10].

Section 10. **Objection of political subdivision.** (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under [this act]. The resolution must include a statement of the reasons for the objection.

(2) If such a resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted under [this act].

Section 11. **Written plan for conduct of election — amendments — approval procedures.** (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state at least 60 days prior to the date set for the election.

(2) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

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(3) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(4) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan.

Section 12. **Proportional voting.** The election administrator shall provide a method for proportional voting in his written plan for an election conducted under [this act] that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

Section 13. **Distributing materials to electors — procedure.** For each election conducted under [this act], the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) clearly marked on its face with the words "DO NOT FORWARD. RETURN TO SENDER. RETURN POSTAGE GUARANTEED.";

(b) addressed to a single individual elector at the most current address available from the official registration records; and

(c) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address.

Section 14. **When materials to be mailed.** For any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day. All ballots must be mailed the same day.

Section 15. **Voting by elector when absent from place of residence during conduct of election.** (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) Ballots mailed to electors pursuant to this section must be mailed the same day that all other ballots are mailed.

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Section 16. **Voting mail ballots.** (1) Upon receipt of his ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing a single ballot in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in [section 18].

(2) For the purpose of [this act], an official ballot is voted when, after the requirements of [sections 22 and 24] have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box.

Section 17. **Replacement ballots — procedures.** (1) An elector may obtain a replacement ballot as provided in this section if his ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking a replacement ballot shall sign a sworn statement stating that the ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one may be issued.

(4) The election administrator shall designate his office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to [section 25].

(6) The election administrator shall keep a record of each replacement ballot issued. If he later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he shall immediately notify the county attorney and the secretary of state of each instance.

Section 18. **Returning marked ballots — when — where.** (1) After complying with [section 16], an elector may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it in person to any place of deposit designated by the election administrator pursuant to [section 19].

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(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day.

Section 19. **Places of deposit.** (1) The election administrator shall designate his office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any location so designated shall function as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

Section 20. **Disposition of ballots returned in person.** Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to [section 22];

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom he receives ballots;

(b) have the elector sign the log where his name has been entered;

(c) while the elector is present, compare the signature on the return/verification envelope with that entered in the log and resolve any discrepancies with the elector;

(d) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(e) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail.

Section 21. **Disposition of ballots returned by mail.** (1) Upon receipt of each return/verification envelope, election officials shall:

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(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by [section 22];

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to [section 24];

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning a particular ballot, the election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the question is resolved satisfactorily or the question is determined as provided in [section 26].

Section 22. **Signature verification — procedures.** (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under [section 23].

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead shall:

(a) give notice to the elector as provided in [section 25]; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination.

Section 23. **Voting by nonregistered electors.** (1) For any election being conducted under [this act] by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

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(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

Section 24. **Valid ballots — requirements.** (1) Only valid ballots may be counted in an election conducted under [this act].

(2) For the purpose of [this act], a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to [section 22]; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope; or

(b) any identifying marks are placed on the ballot by the elector.

Section 25. **Notice to elector — opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under [section 22]; or

(b) has discovered a procedural mistake made by the elector that would invalidate his ballot under [section 24].

(2) The election administrator shall inform the elector that he may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector so appearing must be permitted to:

(a) verify his signature, after proof of identification, by affirming that the signature is in fact his or completing a new registration card containing his current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

Section 26. **Resolving issues in question.** Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to resolve the issue to his satisfaction, he shall give notice to the elector as provided in [section 25].

(2) If the elector fails to appear or, if even after such an appearance, the issue is still not resolved to the election administrator's satisfaction, the

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election administrator shall present the issue for a determination to the board of judges appointed to count the ballots.

(3) If the counting board is unable to resolve the issue to its satisfaction, it may not count the ballot in question. Instead, the election administrator shall present the issue to the board of canvassers for a determination of the issue.

(4) If the board of canvassers is unable to resolve the issue, the ballot must not be counted.

Section 27. **Procedure at close of voting.** After the close of voting on election day, election officials shall:

(1) open the official ballot boxes;

(2) open each secrecy envelope, removing the ballot; and

(3) proceed to count the votes as otherwise provided by law.

Section 28. Section 7-13-2236, MCA, is amended to read:

"7-13-2236. General district election. *(1)* The election of directors of the district shall be held every 4 years with the election for local government officials provided for in 13-1-104(2).

(2) The election of directors of a district located in an unincorporated area may be conducted by mail ballot as provided in [sections 1 through 27]."

Section 29. Section 13-1-401, MCA, is amended to read:

"13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in [sections 1 through 27].

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), *or (3)* shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements."

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Section 30. **Codification instruction.** Sections 1 through 27 are intended to be codified as an integral part of Title 13, and the provisions of Title 13 apply to sections 1 through 27.

Section 31. **Effective date.** This act is effective July 1, 1985.

Approved March 26, 1985.

CHAPTER NO. 197

[SB 201]

AN ACT GENERALLY REVISING THE LAW RELATING TO COMMERCIAL FERTILIZER; CHANGING THE COMPOSITION OF THE FERTILIZER ADVISORY COMMITTEE; FURTHER DEFINING THE RESPONSIBILITY AND ENFORCEMENT OF PAYMENT OF FERTILIZER FEES; AND REQUIRING LABELING OF STORAGE BINS; AMENDING SECTIONS 2-15-1516, 80-10-101, 80-10-103, 80-10-201, 80-10-204, AND 80-10-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1516, MCA, is amended to read:

"2-15-1516. Fertilizer advisory committee. (1) There is a fertilizer advisory committee.

(2) *The committee is composed of seven members, appointed jointly by the director of the Montana agricultural experiment station and the director of the Montana cooperative extension service of Montana state university, as follows:*

(a) five members involved in agriculture that includes the use of fertilizer in production; and

(b) two members from the fertilizer industry.

(3) The director of the department of agriculture shall serve as an ex officio member.

(4) The members shall serve staggered 5-year terms, *except that members shall be initially appointed so that no more than two terms expire in any year.*"

Section 2. Section 80-10-101, MCA, is amended to read:

"80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content

and which is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(a) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form or in containers of greater than 1,000 pounds.

(b) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than one of the primary plant nutrients (nitrogen, phosphoric acid, and potash);

(ii) has approximately 85% of its plant nutrient content present in the form of a single chemical compound; or

(iii) is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(c) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(d) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of 1,000 pounds or less.

(e) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(3) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(4) "Distributor" means any person who distributes.

(5) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(6) "Licensee" means any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

(8) "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

(9) "Manufacturer" is a person who manufactures commercial fertilizer or soil amendments.

(10) "Official sample" means any sample of commercial fertilizer taken by the department and so designated by the department.

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(11) "Percent or percentage" means the percentage by weight.

(12) "Person" means an individual, partnership, association, firm, or corporation.

(13) "Registrant" means the person who registers commercial fertilizer and/or soil amendment.

(14) "Soil amendment" means any material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics.

(15) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 3. Section 80-10-103, MCA, is amended to read:

"80-10-103. Assessment to fund educational and experimental programs — collection. Moneys to fund 80-10-104 through 80-10-106 *must* be produced by an assessment of 35 cents per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in 80-10-207 and shall be collected from the *manufacturer*."

Section 4. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration and licenses. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures shall be registered by *or on behalf of* the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a fee of $10 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers in packages of 10 pounds or less which shall be registered at a fee of $25 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration shall include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department.

(b) Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

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(3) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(4) No manufacturer may reregister his product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department."

Section 5. Section 80-10-204, MCA, is amended to read:

"80-10-204. Labeling. (1) Any commercial fertilizer distributed in this state in packages shall have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

(a) the net weight;

(b) the name and address of the manufacturer or distributor guaranteeing the analysis;

(c) the brand and product name;

(d) the grade;

(e) the guaranteed analysis; and

(f) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, shall be accompanied by a clearly legible document which shall be supplied to the purchaser at the time of delivery and at the time his invoice is delivered. The document shall show:

(a) net weight;

(b) name and address of the distributor or manufacturer guaranteeing the analysis;

(c) guaranteed analysis or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(4) When distributed in containers, soil amendments shall have a label affixed to or printed on the container. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain the following information:

(a) net weight;

(b) name and address of the registrant or licensee who is responsible for the product;

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(c) brand and product name;

(d) guaranteed analysis;

(e) other requirements, such as particle size, as established by rule."

Section 6. Section 80-10-207, MCA, is amended to read:

"80-10-207. Fees. (1) *(a) A manufacturer registering under 80-10-201(1)* shall *pay* to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers sold in packages of 10 pounds or less, and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) inspection, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. Any change in fee becomes effective on the first day of a reporting period. All *manufacturers* shall be given notice of any change in fees before the effective date.

(ii) assessment, the fee prescribed in 80-10-103. The assessment fee shall be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold per 6-month period, there shall be paid to the department a fee of $5 per soil amendment per 6-month period in lieu of the 10 cents per ton fee. Inspection fees shall be used by the department for administration of this part.

(3) (a) *(i)* Every licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer in packages of 10 pounds or less and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) Every manufacturer who registers a soil amendment or commercial fertilizer in this state, or a person who registers on the manufacturer's behalf, except specialty fertilizer in packages of 10 pounds or less and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the

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number of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on behalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report *required by subsection (3)(a)(ii)* is not filed and the payment of fees is not made within 30 days after the end of the period a collection fee amounting to 10% of the amount due but not less than $10 shall be assessed against the *manufacturer*, and the amount of fees due shall constitute a debt and become the basis of a judgment against the *manufacturer*.

(4) All fees collected for licenses, registration, and inspection and moneys collected as penalties shall be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund."

Section 7. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 26, 1985.

CHAPTER NO. 198

[SB 43]

AN ACT TO INCLUDE IN MONTANA ADJUSTED GROSS INCOME THE PORTION OF SMALL BUSINESS CORPORATION INCOME WHICH ESCAPES STATE TAX; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability; *and*

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(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

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(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 199

[SB 44]

AN ACT CLARIFYING THE INCLUSION OF INTEREST INCOME FROM INSTALLMENT SALES OF REAL OR TANGIBLE BUSINESS PROPERTY LOCATED IN MONTANA IN A NONRESIDENT'S MONTANA ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-131, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-131, MCA, is amended to read:

"**15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income — deductions.** (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. *Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income.* Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

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(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

(7) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability date.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

Approved March 29, 1985.

CHAPTER NO. 200

[SB 46]

AN ACT TO RAISE FROM $100 TO $200 THE MINIMUM ANNUAL TAX LIABILITY TRIGGERING MANDATORY WAIVER OF THE REQUIREMENT FOR FILING A QUARTERLY SPECIAL FUELS TAX RETURN; AMENDING SECTION 15-70-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-325, MCA, is amended to read:

"**15-70-325. Returns.** (1) For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer shall file

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with the department a monthly tax return and each special fuel user shall file with the department, on forms prescribed by said department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that such user's annual tax liability is or will be *$200* or less.

(3) Such user shall make an annual report and return to the department on forms prescribed by said department, on or before January 31 of each year. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file quarterly returns as herein provided. Such return, annual or quarterly, shall contain a declaration by the person making the same to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this part.

(4) If a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

(5) The special fuel dealer or special fuel user shall file the return on or before the last day of the next succeeding calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing but not to exceed 30 days."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 201

[SB 50]

AN ACT ELIMINATING THE REQUIREMENTS FOR A COUNTY CLERK AND RECORDER TO SUBMIT A DELINQUENT TAXPAYER REPORT AND A COPY OF THE COUNTY BUDGET TO THE DEPARTMENT OF REVENUE; AMENDING SECTION 7-6-2315, MCA; AND REPEALING SECTION 15-16-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2315, MCA, is amended to read:

"7-6-2315. Consideration of tabulation by county commissioners — preparation of preliminary budget. (1) The tabulation shall be

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submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July.

(2) Upon receipt thereof, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the second Monday of July, make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover.

(3) Upon completion of the budget, the county clerk shall immediately transmit a copy of it to the department of commerce."

Section 2. **Repealer.** Section 15-16-304, MCA, is repealed.

Approved March 29, 1985.

CHAPTER NO. 202

[SB 90]

AN ACT TO EXPAND DISCOVERY IN CRIMINAL CASES; PROVIDING FOR MUTUAL AND RECIPROCAL DISCOVERY IN CRIMINAL CASES; AND REPEALING SECTIONS 46-15-301 THROUGH 46-15-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Defendant" means the defense, including the accused, his counsel, and defense counsel's staff or investigators.

(2) "Make available for examination and reproduction" means to make material and information subject to disclosure available upon request at a designated place during specified reasonable times and provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make any other or additional arrangements.

(3) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a mechanical, electrical, or other recording of a person's oral communications or a transcript thereof; and

(c) a writing containing a verbatim record as a summary of a person's oral communications.

(4) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. Such notes may no longer themselves be considered a statement.

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Section 2. **Disclosure by prosecution.** (1) Upon arraignment in district court or at such later time as the court may for good cause permit, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within his possession or control:

(a) a list of the names and addresses of all persons whom the prosecutor intends to call as witnesses in the case-in-chief, together with their relevant written or recorded statements;

(b) all written or oral statements of the accused and of any person who will be tried with him;

(c) the names and addresses of experts who have personally examined the accused or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons, including all written reports or statements made by them in connection with the particular case;

(d) a list or copies of all papers, documents, photographs, or tangible objects that the prosecutor will use at trial or that were obtained from or purportedly belong to the accused; and

(e) all material or information that tends to mitigate or negate the accused's guilt as to the offense charged or that would tend to reduce his punishment therefor.

(2) At the same time the prosecutor shall inform the defendant of and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the accused was a party;

(b) whether a search warrant has been executed in connection with the case;

(c) whether the case has involved an informant, and, if so, his identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and [section 4(3)].

(3) The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of his staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion of the defendant showing that he has substantial need in the preparation of his case for additional material or information not

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otherwise provided for and that he is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to him. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at such later time as the court may for good cause permit, together with their relevant written or recorded statements, a list of the names and addresses of all persons whom he intends to call as rebuttal witnesses to the defenses of alibi, compulsion, entrapment, justifiable use of force, mistaken identity, or good character or the defense that the accused did not have a particular state of mind that is an element of the offense charged.

Section 3. **Disclosure by accused.** (1) At any time after the filing in district court of an indictment or information, the accused, in connection with the particular crime with which he is charged, shall upon written request of the prosecutor and for good cause shown:

(a) appear in a line-up;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable intrusions of his body;

(g) provide specimens of his handwriting; or

(h) submit to a reasonable physical or medical inspection of his body; however, such inspection does not include psychiatric or psychological examination.

(2) The accused is entitled to the presence of counsel at the taking of any evidence pursuant to subsection (1). Subsection (1) supplements and does not limit any other procedures established by law.

(3) Within 30 days after arraignment in district court or at such later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of his intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the accused did not have a particular state of mind that is an essential element of the offense charged. The notice must specify for each defense the names and addresses of the persons that will be called as witnesses at trial in support of the defense. Prior to trial the defendant shall, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is

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included on the list, except for good cause shown. Any evidence that reasonably becomes available after the initial 30 days shall be admitted if [section 7] is complied with.

(4) Simultaneously with the notice of defenses submitted under subsection (3), the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names and addresses of all persons, other than the accused, whom he will call as witnesses at trial, together with all statements made by them in connection with the particular case;

(b) the names and addresses of experts whom he will call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by them in connection with the particular case; and

(c) a list of all papers, documents, photographs and other tangible objects that he will use at trial.

(5) The defendant's obligation under this section extends to material and information within the possession or control of the defendant or his attorneys and agents.

(6) Upon motion of the prosecutor showing that he has substantial need in the preparation of his case for additional material or information not otherwise provided for, that he is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the accused's constitutional rights, the court in its discretion may order any person to make such material or information available to him. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

Section 4. **Materials not subject to disclosure.** (1) Except as provided in subsection (2), disclosure is not required for the work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the work product, that information must be disclosed.

(3) Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to his operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused.

Section 5. **Failure to call a witness or raise a defense.** The fact that a witness' name is on a list furnished pursuant to [this act] or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows such comment after finding that the inclusion of the witness' name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown.

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Section 6. **Use of materials.** Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to [this act] may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

Section 7. **Continuing duty to disclose.** If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, such party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure.

Section 8. **Excision and protective orders.** (1) Upon a motion of any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by [this act] be denied, deferred, or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under [this act], it may authorize the party disclosing it to excise that portion of the material which is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit him to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when such presentation is made.

(4) If the court enters an order that any material or any portion thereof is not discoverable under [this act], the entire text of the material must be sealed and preserved in the record in the event of an appeal.

Section 9. **Sanctions.** If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of [this act] or any order issued pursuant to [this act], the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt;

(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice.

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Section 10. **Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 46.

Section 11. **Repealer.** Sections 46-15-301 through 46-15-303, MCA, are repealed.

Approved March 29, 1985.

CHAPTER NO. 203

[SB 92]

AN ACT EXTENDING HANDICAPPED PERSONS' PARKING PRIVILEGES TO PERSONS WHO ARE ENTITLED TO SUCH PRIVILEGES IN ANOTHER STATE; AMENDING SECTION 49-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — exemptions from time limits. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part *or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1)* and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic."

Approved March 29, 1985.

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CHAPTER NO. 204

[SB 144]

AN ACT INCREASING SUPREME COURT FILING FEES; AMENDING SECTION 3-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-403, MCA, is amended to read:

"**3-2-403. Fees.** The clerk must collect the following fees:

(1) for filing the transcript on appeal in any civil case appealed to the supreme court, *$75* payable by the appellant as payment in full for all services rendered in the case up to the remittitur to the court below;

(2) for filing a petition for any writ, *$75*, as payment in full for all services rendered in the cause;

(3) for a certificate of *good standing* as an attorney, $5;

(4) for *preparing* copies of *documents on file*, 15 cents per *page*;

(5) for each *certified copy* under seal, $1."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 205

[SB 151]

AN ACT TO INCREASE THE TIME DURING WHICH IMPOSITION OF A SENTENCE MAY BE DEFERRED WHEN THE DEFERRAL HAS A CONDITION THAT IMPOSES ANY FINANCIAL OBLIGATION; AMENDING SECTION 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

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(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If *any financial obligation* is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

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(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

Approved March 29, 1985.

CHAPTER NO. 206

[SB 180]

AN ACT CHANGING THE NAME OF THE COUNTY PRELIMINARY BUDGET TO THE COUNTY PROPOSED BUDGET; CHANGING THE DATES FOR PREPARATION OF A COUNTY PROPOSED BUDGET; INCREASING THE NUMBER OF TIMES IT MUST BE PUBLISHED; DELETING THE REQUIREMENT THAT IT MUST BE TRANSMITTED TO THE DEPARTMENTS OF COMMERCE AND REVENUE; AMENDING SECTIONS 7-6-2315, 7-6-2316, 7-6-2351, AND 53-2-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2315, MCA, is amended to read:

"7-6-2315. Consideration of tabulation by county commissioners. (1) The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the *third* Monday of July.

(2) Upon receipt thereof, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the *fourth* Monday of July, make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the *county proposed* budget for the fiscal year which it is intended to cover."

Section 2. Section 7-6-2316, MCA, is amended to read:

"7-6-2316. Notice of hearing on county proposed budget. (1) The board of county commissioners shall then have a notice published stating that:

(a) the board has completed its county *proposed* budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations, stating the time and place of the meeting; and

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(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice shall be published *two times, once each week,* in a newspaper of general circulation in the county."

Section 3. Section 7-6-2351, MCA, is amended to read:

"7-6-2351. District court budget. (1) As soon as the *county proposed* budget provided for in 7-6-2315 has been agreed upon by the governing body, a copy shall be transmitted to the district court. At any time before the final adoption of the budget, the district court may make recommendations for changes in any part of the budget relating to the court considered necessary for the court to discharge its obligations under the law.

(2) No part of the district court fund may be used for any purpose other than the costs and expenses described in 7-6-2511, and no part may be used for the construction or improvement of any county building."

Section 4. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. Counties transferring public assistance and protective services responsibilities to the department of social and rehabilitation services under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(4) As soon as the *county proposed* budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department of social and rehabilitation services shall promptly examine the *county proposed* budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient

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and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 207

[SB 225]

AN ACT TO EXEMPT THE MONTANA UNIVERSITY SYSTEM FROM CERTAIN REQUIREMENTS RELATING TO DATA PROCESSING UNLESS THE UNIVERSITY SYSTEM'S PROPOSED DATA PROCESSING ACTIVITY IMPACTS THE STATE CENTRAL COMPUTER AND DATA PROCESSING EQUIPMENT POOL; AMENDING SECTION 2-17-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-501, MCA, is amended to read:

"2-17-501. Responsibilities of director of department of administration for data processing. (1) Except as provided in subsection (2), the director of the department *of administration* shall:

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(a) establish policies and a statewide plan, in cooperation with state agencies, for the operation and development of data processing for state government;

(b) review and approve agency specifications and procurement methods for the acquisition of data processing equipment to insure network compatibility and conformity with the statewide data processing plan;

(c) review and approve all contracts for private sector data processing services to insure conformance with the statewide data processing plan; and

(d) operate and maintain a central computer center and a data processing equipment pool for the use of all state agencies and political subdivisions.

(2) *(a)* The responsibilities of the director under *subsection (1)* do not apply to the office of the superintendent of public instruction, and that office is exempt from the requirements of *subsection (1).*

(b) The responsibilities of the director under subsection (1)(b) do not apply to the Montana university system, and the university system is exempt from the requirements of subsection (1)(b) unless a proposed university system activity related to data processing impacts the operation of the central computer center and data processing equipment pool. If the university system determines that such an impact may occur, the system shall notify the director, and the proposed activity is subject to the requirements of subsection (1)(b)."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 208

[SB 235]

AN ACT PERMITTING A DISTRICT COURT, UPON RECEIPT OF A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER, TO DIRECT THAT THE PERSON ALLEGED TO BE MENTALLY ILL OR HAVING A MENTAL DEFICIENCY BE EXAMINED BY EITHER A PROFESSIONAL PERSON OTHER THAN A PHYSICIAN OR BY A PHYSICIAN; AMENDING SECTION 72-5-408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-408, MCA, is amended to read:

"**72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may

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be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness *or* mental deficiency, *the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is* physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. *It is preferable that* a physician *designated by the court* not *be* connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

Approved March 29, 1985.

CHAPTER NO. 209

[SB 253]

AN ACT PROVIDING FOR THE DISPLAY OF A TEMPORARY MOTOR VEHICLE STICKER IN THE UPPER LEFT-HAND CORNER OF THE REAR WINDOW; AMENDING SECTION 61-3-342, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-342, MCA, is amended to read:

"61-3-342. Temporary window sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of the vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the division and upon the payment of a fee of $2 to be collected by the county treasurer and remitted to the division, obtain from the county treasurer of the county in which the vehicle is to be registered a temporary *window* sticker of such size, color, and design as the division may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the *upper left-hand corner of the*

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rear window of the motor vehicle, may operate the vehicle during the period for which the *window* sticker has been validated without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may purchase, more than one 60-day temporary *window* sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day *window* sticker."

Section 2. **Extension of authority.** Any existing authority of the division of motor vehicles to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 210

[SB 267]

AN ACT PROVIDING TO UNMARRIED PERSONS THE SAME EXEMPTIONS FROM EXECUTION OF JUDGMENT AS THOSE GRANTED TO PERSONS WHO ARE MARRIED OR HEADS OF FAMILIES; AMENDING SECTIONS 25-13-611 THROUGH 25-13-613, 25-13-616, AND 25-13-617, MCA; REPEALING SECTION 25-13-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-611, MCA, is amended to read:

"25-13-611. Necessary household property. (1) The following property is exempt from execution, except as herein otherwise provided:

(a) all wearing apparel of the judgment debtor and family;

(b) all chairs, tables, desks, and books to the value of $200;

(c) all necessary household, table, and kitchen furniture of the judgment debtor, including one sewing machine, stoves, stovepipes, and stove furniture, heating apparatus, beds, bedding, and bedsteads, and provisions and fuel provided for individual or family use sufficient for 3 months;

(d) 1 horse, saddle, and bridle; 2 cows and their calves; 4 hogs; 50 domestic fowls, and feed for such animals for 3 months;

(e) one clock; and

(f) all family pictures.

(2) None of the property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions."

Section 2. Section 25-13-612, MCA, is amended to read:

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"**25-13-612. Property necessary to carry on trade or profession.** (1) In addition to the property mentioned in 25-13-611, there shall be exempt to all judgment debtors the following property:

(a) to a farmer: farming utensils or implements of husbandry, not exceeding in value $600; two oxen or two horses or mules and their harness, one cart or wagon, set of sleds, and food for such oxen, horses, cows, or mules for 3 months; all seed, grain, or vegetables actually provided or on hand for the purpose of planting or sowing the following spring, not exceeding in value $200;

(b) to a mechanic or artisan: tools or implements necessary to carry on his trade;

(c) to a surgeon, physician, or dentist: the instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries and necessary office furniture;

(d) to attorneys at law and ministers of the gospel, etc.: the professional libraries of attorneys, counselors, judges, ministers of the gospel, editors, schoolteachers, and music teachers and their necessary office furniture; the musical instruments of music teachers; the notarial seal, records, and office furniture of a notary public;

(e) to a miner: his cabin or dwelling, sluices, and pipes, hose, windlass, derricks, cars, pumps, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of $1,000; and one horse or mule with harness and food for such horse or mule for 3 months, when such horse or mule is used in working his mine or mining claim;

(f) to a civil, mining, or mechanical engineer: instruments, tools, books, and records necessary to carry on his profession;

(g) to a chemist or assayer: the tools, instruments, and supplies necessary to carry on his profession;

(h) to a cartman, hackman, huckster, peddler, teamster, or laborer: one horse or mule and harness for two animals or two oxen and harness, and one cart or wagon, one dray or truck, one hack or carriage by the use of which such person habitually earns his living;

(i) one vehicle and harness or other equipment used by a physician or surgeon or minister of the gospel in making his professional visits, with food for such horse, mule, or oxen for 3 months;

(j) to an osteopath or chiropractor: the instruments and equipment necessary to the exercise of his profession, with his scientific and professional library and necessary office furniture.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions. No person can claim more than one of the exemptions mentioned in subsections (1)(a) through (1)(i) of this section."

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Section 3. Section 25-13-613, MCA, is amended to read:

"25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-611, there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions."

Section 4. Section 25-13-616, MCA, is amended to read:

"25-13-616. Life insurance benefits. (1) In addition to the property mentioned in 25-13-611, there shall be exempt to all judgment debtors all moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance on the life of the debtor if the annual premiums paid do not exceed $500.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions."

Section 5. Section 25-13-617, MCA, is amended to read:

"25-13-617. Truck or automobile. (1) In addition to all other exemptions, one truck or automobile of the value of not more than $1,000 is exempt from attachment or execution; but where debts are incurred by any such debtor or his wife or family for the common necessaries of life, then such truck or automobile is nevertheless subject to attachment and execution to satisfy debts so incurred.

(2) The words "his family", as used in this section, are to be construed to include:

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(a) the debtor's spouse;

(b) every person who resides with the debtor under his care or maintenance and who is:

(i) a minor child of the debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

Section 6. **Repealer.** Section 25-13-602, MCA, is repealed.

Approved March 29, 1985.

CHAPTER NO. 211

[SB 290]

AN ACT TO CLARIFY THE LAW GOVERNING POSTCONVICTION AND HABEAS CORPUS RELIEF; TO PROVIDE THAT A PETITION CHALLENGING THE REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE MUST BE PRESENTED AS A PETITION FOR POSTCONVICTION RELIEF; AMENDING SECTIONS 46-21-101 AND 46-22-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-101, MCA, is amended to read:

"46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, *that a suspended or deferred sentence was improperly revoked,* or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence or the supreme court to vacate, set aside, or correct the sentence *or revocation order.*"

Section 2. Section 46-22-101, MCA, is amended to read:

"46-22-101. Who may prosecute writ. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into

the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction *or sentence* of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal; *nor is relief under this chapter available to attack the legality of an order revoking a suspended or deferred sentence.* Relief for such purposes is limited to the provisions of Title 46, chapter 21."

Approved March 29, 1985.

CHAPTER NO. 212

[SB 292]

AN ACT REVISING AND CLARIFYING THE MANDATORY LIABILITY PROTECTION LAW; AMENDING SECTIONS 61-6-102, 61-6-303, AND 61-6-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-102, MCA, is amended to read:

"61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

(1) "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this state.

(4) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle.

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(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(6) "Ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel and in common use by the public."

Section 2. Section 61-6-303, MCA, is amended to read:

"61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the division upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle;

(8) a vehicle moved solely by human or animal power;

(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and he is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction."

Section 3. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. It is unlawful for any person to operate a motor vehicle upon *ways* of this state *open to the public* without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the division of motor vehicles as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable by a fine not to exceed $250."

Section 4. **Extension of authority.** Any existing authority of the division of motor vehicles to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

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CHAPTER NO. 213

[SB 298]

AN ACT TO INCREASE TO 10 THE NUMBER OF CLAIMS A PARTY MAY FILE IN SMALL CLAIMS COURT IN A CALENDAR YEAR; AMENDING SECTION 25-35-505, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-35-505, MCA, is amended to read:

"25-35-505. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than *10* claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 2. **Effective date.** This act is effective January 1, 1986.

Approved March 29, 1985.

CHAPTER NO. 214

[SB 302]

AN ACT TO PROHIBIT SHOOTING FROM OR ACROSS A PUBLIC ROAD OR HIGHWAY RIGHT-OF-WAY; AMENDING SECTIONS 61-8-369 AND 87-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-369, MCA, is amended to read:

"61-8-369. Shooting from or across road or highway right-of-way. No person shall shoot any firearm from or across the *right-of-way* of any state or federal highway or county road."

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Section 2. Section 87-3-101, MCA, is amended to read:

"87-3-101. General restrictions. It is unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, *or across* any public highway *or the shoulder, berm, or borrow-pit right-of-way of any public highway, as defined in 61-1-201,* in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight or other artificial light, trap, snare, or salt lick; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set."

Approved March 29, 1985.

CHAPTER NO. 215

[SB 339]

AN ACT ALLOWING A SHERIFF TO CHARGE A FEE OF $1 IN LIEU OF MILEAGE FOR SERVING ITEMS OF A CIVIL NATURE; AMENDING SECTION 7-32-2143, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

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(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service."

Approved March 29, 1985.

CHAPTER NO. 216

[SB 358]

AN ACT LIMITING THE EXEMPTION OF THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION FROM CERTAIN REQUIREMENTS RELATING TO DATA PROCESSING; AMENDING SECTION 2-17-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-501, MCA, is amended to read:

"**2-17-501. Responsibilities of director of department of administration for data processing.** (1) Except as provided in subsection (2), the director of the department shall:

(a) establish policies and a statewide plan, in cooperation with state agencies, for the operation and development of data processing for state government;

(b) review and approve agency specifications and procurement methods for the acquisition of data processing equipment, excluding specifications

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and methods relating to instruction and research in the university system, to insure network compatibility and conformity with the statewide data processing plan;

(c) review and approve all contracts for private sector data processing services to insure conformance with the statewide data processing plan; and

(d) operate and maintain a central computer center and a data processing equipment pool for the use of all state agencies and political subdivisions.

(2) The responsibilities of the director under *subsection (1)(b)* do not apply to the office of the superintendent of public instruction, and that office is exempt from the requirements of *subsection (1)(b) unless a proposed activity of that office related to data processing affects the operation of the central computer center and data processing equipment pool. If the office of the superintendent of public instruction determines that such an impact may occur, it shall notify the director, and the proposed activity shall be subject to the requirements of subsection (1)(b).*"

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 217

[SB 359]

AN ACT LIMITING THE MANDATORY CIVIL PENALTY FOR FAILURE TO COMPLY WITH AN ABATEMENT OR CESSATION ORDER UNDER THE STRIP AND UNDERGROUND MINE RECLAMATION ACT; AMENDING SECTION 82-4-254, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-254, MCA, is amended to read:

"**82-4-254. Violation — penalty — waiver.** (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall be assessed a penalty of not less than $750 for each day, *up to 30 days*, during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement

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requirements or until entry of an order of court ordering suspension of the abatement requirements. *If the failure to abate continues for more than 30 days, the department shall, within 30 days after such 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6).*

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines such violation is not of potential harm to public health, public safety, or the environment or impairs the administration of this part. The board of land commissioners shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

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(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 2. **Extension of authority.** Any existing authority of the department of state lands or the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 218

[SB 373]

AN ACT TO REVISE AND CLARIFY THE MOTOR VEHICLE SAFETY-RESPONSIBILITY ACT; AMENDING SECTIONS 61-6-112, 61-6-122, 61-6-125, 61-6-131, 61-6-133, 61-6-138, 61-6-142, AND 61-6-151, MCA; REPEALING SECTION 61-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-112, MCA, is amended to read:

"61-6-112. Surrender of license. Any person whose license shall have been suspended as herein provided, or whose policy of insurance or

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bond, when required under this part, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the division shall immediately return his license to the division. If any person shall fail to return to the division the license as provided herein, the division shall forthwith direct any peace officer or highway patrolman to secure possession thereof and to return the same to the division."

Section 2. Section 61-6-122, MCA, is amended to read:

"61-6-122. Suspension for nonpayment of judgments — exceptions. (1) The division, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in 61-6-125.

(2) If the judgment creditor consents in writing, in such form as the division may prescribe, that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the division, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in 61-6-125, provided the judgment debtor furnishes proof of financial responsibility."

Section 3. Section 61-6-125, MCA, is amended to read:

"61-6-125. Installment payment of judgments — default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The division shall not suspend a license or a nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the division shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this part."

Section 4. Section 61-6-131, MCA, is amended to read:

"61-6-131. When proof of financial responsibility required. (1) Whenever the division under any of the laws of this state revokes the license of any person, *such* license shall remain revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

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(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, no license shall be thereafter issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(3) Whenever the division revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility."

Section 5. Section 61-6-133, MCA, is amended to read:

"61-6-133. Certificate of insurance as proof. Proof of financial responsibility may be furnished by filing with the division the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle."

Section 6. Section 61-6-138, MCA, is amended to read:

"61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him *$55,000* in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of *$55,000*. The state treasurer shall not accept any such deposit and issue a certificate therefor and the division shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid."

Section 7. Section 61-6-142, MCA, is amended to read:

"61-6-142. Duration of proof — when money or securities may be canceled or returned. (1) The division shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this part as proof of financial responsibility, or the division shall waive the requirement of filing proof under this part, in any of the following events:

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(a) at any time after 3 years from the date such proof was required when during the 3-year period preceding the request the division has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license to the division.

(2) However, the division shall not consent to the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has deposited such money or securities has, within 1 year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the division.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302."

Section 8. Section 61-6-151, MCA, is amended to read:

"61-6-151. Violations — penalties. (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority shall be fined not more than $1,000 or imprisoned for not more than 1 year or both.

(2) Any person whose license or nonresident's operating privilege has been suspended or revoked under this part and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this part, shall be fined not more than $500 or imprisoned not exceeding 6 months or both.

(3) Any person willfully failing to return a license as required in 61-6-112 shall be fined not more than $500 or imprisoned not to exceed 30 days or both.

(4) Any person who shall violate any provision of this part for which no penalty is otherwise provided shall be fined not more than $500 or imprisoned not more than 90 days or both."

Section 9. **Repealer.** Section 61-6-111, MCA, is repealed.

Section 10. **Extension of authority.** Any existing authority of the department of justice, division of motor vehicles, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

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CHAPTER NO. 219

[SB 378]

AN ACT CLARIFYING THAT FEES COLLECTED FOR PESTICIDE EDUCATION PROGRAMS MUST BE EXPENDED FOR SUCH PURPOSES; AMENDING SECTION 80-8-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-109, MCA, is amended to read:

"80-8-109. Educational programs. (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the state or a unit of the Montana university system.

(3) All fees collected *pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.*"

Section 2. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 220

[HB 8]

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO LOCAL GOVERNMENT; AMENDING SECTIONS 7-2-2209, 7-3-1216, 7-3-1219, 7-4-2105, 7-4-2619, 7-4-2631, 7-5-4208, 7-5-4304, 7-6-2211, 7-13-2225, 7-13-2236, 7-14-2531, 7-14-2823, 7-21-2306, 7-21-2407, AND 7-32-2102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-2209, MCA, is amended to read:

"7-2-2209. Hearing and notice on petition. (1) Upon the filing of such petition or petitions and affidavits with the clerk of the board of

county commissioners, said clerk shall forthwith fix a date to hear the proof of the petitions and of any opponents thereto, which date must be not later than 30 days after the filing of such petition with the clerk of said board.

(2) The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties but not within the proposed new county and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the county clerk shall order and cause to be published, at least once a week for 2 weeks preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting to be so held), when and where all persons interested may appear and oppose the granting of said petition and make any objections thereto.

Dated .... at ....., Montana.

....., County Clerk"

Section 2. Section 7-3-1216, MCA, is amended to read:

"7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall be 4 years and shall commence on *the first Monday of January* following their election.

(2) The terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire *when their successors are elected and qualified* in the first year following their election, and the terms of the remaining members first elected shall expire *when their successors are elected and qualified* in the third year following their election."

Section 3. Section 7-3-1219, MCA, is amended to read:

"7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on *the first Monday of January* following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this

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part or part 13 and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance shall be ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform such other duties as may be required by this part or part 13 or by the commission."

Section 4. Section 7-4-2105, MCA, is amended to read:

"7-4-2105. Term of office. The term of office of county commissioners is 6 years. *A county commissioner takes office on the first Monday of January succeeding the date of the election at which the county commissioner was elected.*"

Section 5. Section 7-4-2619, MCA, is amended to read:

"7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of buyer's interest in real property labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgage", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with each page divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties

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executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and *"Where powers are recorded"*;

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificate—Men", with each page divided into six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates—Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of mechanics' liens labeled "Mechanics' liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

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(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons labeled "Individual property of married persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the claim", "Where situated", and "Year when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated."

Section 6. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

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(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $1;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; releases of oil, gas, and mineral leases; assignments of overriding royalties; executions; lis pendens; attachments; and all liens), 50 cents per entry in excess of the first entry contained in a single document;

(k) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(l) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(m) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service;

(n) for each certified copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

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Section 7. Section 7-5-4208, MCA, is amended to read:

"7-5-4208. Applicability of part. (1) Except as provided in subsection (2), the provisions of this part govern the adoption procedures and effect of municipal ordinances *and* resolutions.

(2) The following provisions apply to adoption procedures and effect of municipal ordinances *and* resolutions, notwithstanding the provisions of this part:

(a) *Provisions* of law not within Title 7, chapter 5, parts 1 and 42, *that set forth different procedures for the adoption of an ordinance or resolution relating to specific situations govern the adoption rather than the general provisions of this part or part 1 of this chapter.*

(b) *Sections* of Title 7, chapter 5, part 1, that are in conflict with the provisions of this part *may be adopted by* a municipality by ordinance *to govern the adoption of ordinances and resolutions and the effects of such ordinances and resolutions as a substitute for the applicable sections of this part.*

(c) *Sections* of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part *apply to municipal ordinances and resolutions.*"

Section 8. Section 7-5-4304, MCA, is amended to read:

"7-5-4304. Certain contracts to be submitted to voters. No contract may be let *pursuant to 7-5-4302 that extends* over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town."

Section 9. Section 7-6-2211, MCA, is amended to read:

"7-6-2211. Authorization to conduct county business on a cash basis. (1) In case the total indebtedness of a county, lawful when incurred, exceeds the limit of *23%* established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) Nothing in this section restricts the right of the board to make the necessary tax levies for interest and sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given him by law to obtain payment of his claim."

Section 10. Section 7-13-2225, MCA, is amended to read:

"7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

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(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall contain the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2235 through *7-13-2247*."

Section 11. Section 7-13-2236, MCA, is amended to read:

"7-13-2236. General district election. The election of directors of the district shall be held every 2 years with the election for local government officials provided for in 13-1-104(2)."

Section 12. Section 7-14-2531, MCA, is amended to read:

"7-14-2531. Definition of term single purpose. (1) It shall be deemed a single purpose to:

(a) acquire a right-of-way for and construct a public highway, including any bridge or bridges thereon;

(b) contribute to the cost of a federal-aid bridge;

(c) contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes."

Section 13. Section 7-14-2823, MCA, is amended to read:

"7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner thereof to apply, is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of 10 years. The board may at any time they see fit authorize and maintain fords across any water within any distance of any ferry.

(2) The board granting authority to keep a public ferry must at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross the same and provide for the annual renewal thereof;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than $3 or over $100 per month, payable annually;

(c) fix the rate of tolls which may be collected for crossing the ferry;

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(d) make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters."

Section 14. Section 7-21-2306, MCA. is amended to read:

"7-21-2306. Bond required if deposit taken on orders for future delivery. (1) Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees thereon under the terms of 7-21-2301 through 7-21-2305 shall be accompanied by a bond in the sum of $250 to said county treasurer.

(2) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond shall be approved by said county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of such order or failing therein, that the money advanced by his customers be refunded.

(4) Such bond shall remain in full force and effect for a period of 6 months after the expiration of any such license and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied."

Section 15. Section 7-21-2407, MCA, is amended to read:

"7-21-2407. Bond in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond provided for in this section, receive from the county treasurer a license permitting the conduct of such business for a period of 1 year.

(2) Such bond shall be a surety bond in the sum of $1,000 to said county treasurer.

(3) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond may be a cash bond of equal amount.

(4) The bond shall be approved by said county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to insure the payment of license fees for the period such business is actually conducted if not in fact a bona fide permanent business. The bond shall

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be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of such order or sale.

(5) Such bond shall remain in full force and effect for a period of 6 months after the expiration of the 1-year period."

Section 16. Section 7-32-2102, MCA, is amended to read:

"7-32-2102. Undersheriff to be appointed. The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh *class*, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff."

Approved March 29, 1985.

CHAPTER NO. 221

[HB 86]

AN ACT TO INCLUDE PASSING A SCHOOL BUS DISPLAYING A FLASHING RED SIGNAL WITH WILLFUL OR WANTON DISREGARD FOR THE SAFETY OF PERSONS OR PROPERTY IN THE OFFENSE OF RECKLESS DRIVING; AMENDING SECTIONS 61-8-301, 61-8-351, AND 61-8-715, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; *or*

(c) operates any vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus which has stopped and is displaying the visual flashing red signal as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance."

Section 2. Section 61-8-351, MCA, is amended to read:

"61-8-351. Meeting or passing school bus. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate

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limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway or street for the purpose of receiving or discharging any school children shall stop the vehicle not less than 10 feet before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in 61-9-402 and said driver shall not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street on which they live and until such school bus resumes motion or the driver has signaled traffic to proceed.

(2) In addition the driver of a vehicle *shall* slow *to a rate of speed that is reasonable under the conditions existing at the point of operation and be prepared to stop* when meeting or overtaking from either direction any school bus which is preparing to stop on the highway or street for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights shall be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town for the purpose of receiving or discharging school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site for purposes of receiving or discharging school children and such receipt or discharge does not involve street crossing by the children; and such lights may not be operated in violation of such a policy.

(4) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(5) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway."

Section 3. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — penalty. (1) A person convicted of reckless driving under 61-8-301(1)(a) *or 61-8-301(1)(c)* shall be punished upon a first conviction by imprisonment for a period of not more than 90 days or by fine of not less than $25 or more than $300 or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days or more than 6

months or by a fine of not less than $50 or more than $500 or by both such fine and imprisonment.

(2) A person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added at the discretion of the court a fine of not less than $300 or more than $500. On a second or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000."

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 222

[HB 89]

AN ACT TO MODIFY THE REQUIREMENT OF DISPLAYING A SPECIAL FUEL USER'S PERMIT FOR MONTANA-BASED PROPORTIONALLY REGISTERED MOTOR CARRIERS; AMENDING SECTIONS 15-70-302 AND 15-70-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions. (1) It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) Every special fuel user shall obtain annually from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel user's permit and, *except as provided in subsection (5),* shall at all times display the original or a reproduced copy of the permit in each such vehicle or vehicles operated by him upon the highways as herein defined which shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user shall be responsible for reproducing clear and legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

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(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit shall not be transferable and shall be valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(5) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (2) if:

(a) the motor vehicle operated by him is a vehicle that is part of a motor vehicle fleet based in Montana that is proportionally registered under the provisions of 61-3-711 through 61-3-733;

(b) he obtains a registration card issued by the department of highways indicating the special fuel user's permit number; and

(c) the registration card indicating the special fuel user's permit number is carried in the vehicle and is available for inspection."

Section 2. Section 15-70-311, MCA, is amended to read:

"**15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.** (1) Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit *or registration card indicating the special fuel use permit number*, as provided by 15-70-302, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, shall be required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department may prescribe by order or rule."

Section 3. **Extension of authority.** Any existing authority of the department of highways or department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

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CHAPTER NO. 223

[HB 215]

AN ACT TO ALLOW A SPECIFIC BEER TO BE ADVERTISED ON THE EXTERIOR OF A RETAIL LICENSEE'S PREMISES FOR UP TO 10 DAYS; AMENDING SECTION 16-3-244, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-244, MCA, is amended to read:

"**16-3-244. Beer advertising limitations.** It shall be lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers contained in 16-3-241 of this code and subject to the following restrictions on retailers. No retail licensee shall display or permit to be displayed on the exterior portion or surface of such retailer's place of business or on the exterior portion or surface of any building of which said place of business is a part or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, wholesaler, or place of manufacture of any beer whatsoever, *unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period.*"

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 224

[HB 256]

AN ACT DEFINING ELIGIBILITY TO USE A YEARLY AMOUNT OF TERMINATION PAY IN THE CALCULATION OF AVERAGE FINAL COMPENSATION UNDER THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE RATE OF CONTRIBUTION ON THIS AMOUNT; AMENDING SECTION 19-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-101, MCA, is amended to read:

"**19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602(1). If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, *if the member has 4 or more years of service with the employer from which the termination pay was received.* The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay *contributions* on the termination pay *according to the rates provided for in 19-4-602(1) and 19-4-605(1)*; or

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including

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amounts paid under a salary reduction agreement to a tax sheltered annuity or deferred compensation program and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

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(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 2. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 225

[HB 257]

AN ACT REQUIRING THE NAMING AND LABELING OF POLITICAL COMMITTEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Naming and labeling of political committees.** (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot measure by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot measure as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13 apply to section 1.

Approved March 29, 1985.

CHAPTER NO. 226

[HB 272]

AN ACT TO REQUIRE A PERSON FRAUDULENTLY OBTAINING UNEMPLOYMENT COMPENSATION TO PAY INTEREST ON BENEFIT AMOUNTS THAT HE MUST REPAY; AMENDING SECTION 39-51-3201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-3201, MCA, is amended to read:

"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(1) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

(2) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him *plus interest at the rate of 18% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due.* However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation."

Section 2. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

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CHAPTER NO. 227

[HB 300]

AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR PROSECUTION OF CERTAIN SEX OFFENSES AGAINST VICTIMS LESS THAN 16 YEARS OLD; AMENDING SECTION 45-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) *(a)* A prosecution for criminal homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the offense was committed if the victim was less than 16 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when

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the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Approved March 29, 1985.

CHAPTER NO. 228

[HB 302]

AN ACT TO REPEAL THE INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT AND ENACT AN INTERSTATE MUTUAL AID COMPACT TO PROVIDE FOR EXCHANGE BETWEEN STATES OF RESOURCES NEEDED TO RESPOND TO EMERGENCIES AND DISASTERS; AMENDING SECTIONS 10-3-204 AND 10-3-205, MCA; AND REPEALING SECTION 10-3-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-204, MCA, is amended to read:

"**10-3-204. Intergovernmental arrangements.** (1) This state enacts into law and enters into the interstate *mutual aid* compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in *[section 3]*.

(2) The governor may enter into the compact with any state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate *mutual aid* compact.

(4) All interstate *mutual aid* compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services."

Section 2. Section 10-3-205, MCA, is amended to read:

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"**10-3-205. Authority to join interstate mutual aid compact — supplemental agreements.** (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate *mutual aid* compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate *mutual aid* compact as set forth in *[section 3]*."

Section 3. **Text of compact.** The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by

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that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to

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exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

Section 4. The department of military affairs may adopt rules necessary to implement the interstate mutual aid compact.

Section 5. **Repealer.** Section 10-3-206, MCA, is repealed.

Approved March 29, 1985.

CHAPTER NO. 229

[HB 334]

AN ACT ALLOWING BEER WHOLESALERS TO FURNISH TO RETAILERS PORTABLE EQUIPMENT FOR COOLING AND DISPENSING BEER; AMENDING SECTION 16-3-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-241, MCA, is amended to read:

"**16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers and wholesalers unlawful — exceptions.** *(1)* It shall be unlawful for any brewer or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give, or loan to a retail licensee:

(a) bottle openers, can openers, and trays, with or without advertising matter thereon;

(b) advertising matter or novelties, of a value of not to exceed $50 per brewery in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

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(c) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(d) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of draft beer to a special permittee or a retailer for use in catering an event off his regular premises."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 230

[HB 345]

AN ACT TO AUTHORIZE THE DEPARTMENT OF COMMERCE TO ADMINISTER THE FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND TO ADOPT RULES TO IMPLEMENT THE PROGRAM; AMENDING SECTION 90-1-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-103, MCA, is amended to read:

"**90-1-103. Functions of department of commerce — community development.** The department of commerce shall:

(1) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2) assist the governor in coordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans;

(3) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

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(4) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(5) administer the federal community development block grant program and adopt rules to implement the program."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 231

[HB 351]

AN ACT EXEMPTING EMPLOYMENT OF AN ACTUARY BY THE PUBLIC RETIREMENT BOARDS FROM LAWS GOVERNING EMPLOYMENT OF CONSULTANTS BY STATE AGENCIES; AMENDING SECTION 18-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-103, MCA, is amended to read:

"**18-8-103. Exemptions.** This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health-care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor; *or*

(4) consulting actuaries to the public retirement boards."

Section 2. **Extension of authority.** Any existing authority of the public employees' and teachers' retirement boards to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 232

[HB 360]

AN ACT TO INCREASE FROM 3 TO 15 DAYS THE NOTICE PERIOD FOR TERMINATION OF A MOBILE HOME SPACE RENTAL AGREEMENT UPON FAILURE OF A TENANT TO PAY RENT WHEN DUE; AMENDING SECTION 70-24-422, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) *(a) Except as provided in subsection (2)(b),* if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. If the tenant's noncompliance is purposeful, the landlord may recover treble damages."

Approved March 29, 1985.

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CHAPTER NO. 233

[HB 365]

AN ACT CHANGING THE METHOD OF MAKING AND KEEPING REPORTS OF STOLEN AND RECOVERED VEHICLES; AMENDING SECTION 61-3-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-106, MCA, is amended to read:

"61-3-106. Report of stolen and recovered motor vehicles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make *an* immediate *entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the law enforcement network system (LENS).* Failure on the part of any officer shall be considered to be misfeasance in office and shall constitute grounds for removal. Upon *entry* of such information, *LENS and the national crime information center must be allowed immediate access to the state automated stolen vehicle file.* It shall also be the duty of *LENS* to file reports of stolen and recovered motor vehicles reported to it from other states. *The state automated stolen vehicle file must be made available* to the secretary of state or other proper official in each state of the United States *through access to the national crime information center.* Before issuing a certificate of ownership, the division shall check the *vehicle identification number* on the motor vehicle to be registered against *the state automated stolen vehicle file.*"

Approved March 29, 1985.

CHAPTER NO. 234

[HB 387]

AN ACT ALLOWING THE COMMISSIONER OF LABOR AND INDUSTRY TO ADOPT RULES IMPLEMENTING LAWS GOVERNING CERTAIN PUBLIC WORKS CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rulemaking authority.** The commissioner may adopt rules necessary to implement this part.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

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CHAPTER NO. 235

[HB 431]

AN ACT TO REQUIRE ALL SHERIFF'S SALES OF NONPERISHABLE PERSONAL PROPERTY TO BE PUBLICLY POSTED AND ADVERTISED IN A NEWSPAPER AT LEAST 1 WEEK BEFORE THE SALE; AMENDING SECTION 25-13-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-701, MCA, is amended to read:

"25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place, for not less than 5 days or more than 10 days, *and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county, if there be one*;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places of the township or city where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

SHERIFF'S SALE

....., Plaintiff,

vs.

....., Defendant,

To be sold at sheriff's sale on the .... day of ....., 19.., at ..... (Here insert brief description of property.)

Signed ....., Sheriff

(2) Any sheriff publishing a notice not in accordance with the form set forth in subsection (1)(c) and which shall cost more than such a notice shall not be entitled to any costs for publication of the same but shall be personally liable for the payment of such publication."

Approved March 29, 1985.

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CHAPTER NO. 236

[HB 464]

AN ACT ABOLISHING THE MONTANA SALARY COMMISSION AND ELIMINATING ITS DUTIES; PROVIDING FOR COORDINATION WITH HOUSE BILL NO. 463; AMENDING SECTIONS 13-37-106 AND 15-2-102, MCA; REPEALING SECTIONS 2-16-401 AND 2-16-402, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** The commissioner of political practices is entitled to receive a salary of $26,269 in fiscal year 1984 and $26,794 after June 30, 1984."

Section 2. Section 15-2-102, MCA, is amended to read:

"**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of $26,003 in fiscal 1984 and $26,523 in fiscal 1985 and thereafter. The remaining state tax appeal board members shall be paid a salary of $25,305 in fiscal 1984 and $25,811 in fiscal 1985 and thereafter. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business."

Section 3. **Repealer.** Sections 2-16-401 and 2-16-402, MCA, are repealed.

Section 4. **Coordination instruction.** If House Bill No. 463 fails upon submission to the electors of Montana on November 4, 1986, this act is void in its entirety.

Section 5. **Effective date.** Subject to section 4, this act is effective July 1, 1987.

Approved March 29, 1985.

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CHAPTER NO. 237

[HB 467]

AN ACT TO IMPLEMENT THE CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION BY CLARIFYING EXISTING LAW TO PROVIDE THAT A PUBLIC EMPLOYEE MAY NOT BE REQUIRED TO JOIN A PARTICULAR LABOR ORGANIZATION AS A CONDITION OF EMPLOYMENT IF HIS RELIGION FOR ANY REASON OPPOSES THAT REQUIREMENT; AMENDING SECTION 39-31-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-204, MCA, is amended to read:

"39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support *a particular or* any labor organization, may be required to join or financially support *that particular* labor organization *or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported* as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith

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mailed to such public employee, labor organization, and the chairman of the board of personnel appeals."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 238

[HB 468]

AN ACT TO REVISE THE ELECTRONIC FUNDS TRANSFER ACT BY AUTHORIZING CASH WITHDRAWALS AND ACCOUNT INQUIRIES BY CUSTOMERS OF OUT-OF-STATE FINANCIAL INSTITUTIONS; AMENDING SECTION 32-6-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-6-204, MCA, is amended to read:

"32-6-204. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

(2) Any financial institution or its customers may use any automated teller machine located in this state, regardless of its ownership, to perform electronic funds transfers under terms and conditions mutually agreeable to the owner of the automated teller machine and the other user and pursuant to 32-6-203(1).

(3) The department may authorize the operation of an automatic teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(4) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may:

(a) debit his account in an out-of-state financial institution at an in-state satellite terminal:

(i) in order to withdraw cash; or

(ii) to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state; *or*

(b) make inquiry as to his account balance.

(5) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services."

Section 2. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 239

[HB 482]

AN ACT AMENDING THE LAWS RELATING TO ABSENTEE VOTING TO ALLOW VOTING BY ABSENTEE BALLOT IF AN ELECTOR SUFFERS FROM CHRONIC ILLNESS OR GENERAL ILL HEALTH, OR IF THE ELECTOR IS PREVENTED FROM VOTING AT THE POLLS AS A RESULT OF A SUDDEN ILLNESS OR HEALTH EMERGENCY ON ELECTION DAY OR IN THE DAYS IMMEDIATELY PRECEDING THE ELECTION; PROVIDING FOR THE CREATION OF SPECIAL ABSENTEE ELECTION BOARDS IN THE COUNTIES; PROVIDING AUTHORIZATION TO INCREASE THE COUNTY MILL LEVY FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 13-13-201, 13-13-203, 13-13-211 THROUGH 13-13-213, 13-13-221, 13-13-222, 13-13-232, AND 13-13-234, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-201, MCA, is amended to read:

"**13-13-201. Voting by absentee ballot — qualifications.** A qualified registered elector *is entitled to vote by absentee ballot,* as provided in this part, *if the elector:*

(1) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

(2) is physically incapacitated and unable to go to the polls on election day;

(3) suffers from chronic illness or general ill health; or

(4) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. Such health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance."

Section 2. Section 13-13-203, MCA, is amended to read:

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"13-13-203. Absentee ballots where voting machines or devices used. (1) In precincts where voting machines or devices are used, the election administrator shall if necessary print and provide:

(a) ballots in official form for *qualified* electors *who may vote absentee as provided in 13-13-201*; and

(b) ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter."

Section 3. Section 13-13-211, MCA, is amended to read:

"13-13-211. Application of absentee, chronically ill, or physically incapacitated elector for ballot — special absentee ballot application. *(1)* During a period beginning 75 days before the day of election and ending at noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, *an elector who is chronically ill or in general ill health,* or an elector who will be unable to go to the polls because of physical incapacity may apply to the election administrator for an absentee ballot.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor any such request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county."

Section 4. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot. (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time the ballot is delivered in person by the special absentee election board provided for in [section 10]. Such elector may request by telephone or other means to have a ballot and application personally delivered to him by the special absentee election board at his place of confinement, hospitalization, or residence within the county. Such a request may be made no later than noon on election day."

Section 5. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) *Except as provided in subsection (2), the*

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elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 6. Section 13-13-221, MCA, is amended to read:

"13-13-221. Marking and affirming ballot. (1) After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.

(2) The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.

(3) The elector shall complete and sign the affirmation on the envelope.

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator *or the special absentee election board."*

Section 7. Section 13-13-222, MCA, is amended to read:

"13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector. (1) As soon as the official ballots are available, the election administrator shall permit an elector who is present in his county and who has reason to believe that he will be absent from the county, *ill,* or physically incapacitated on election day to vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail."

Section 8. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of ballots to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the envelope to the judges at the same time the ballots are delivered.

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(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the envelopes to the judges.

(3) If *the election administrator receives an* absentee *ballot* for which an application *or request* was not received *as required by 13-13-211*, or if *an* absentee *ballot is* received by the election administrator after the close of the polls *and was not issued to an elector pursuant to 13-13-201(4), the election administrator* shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots so endorsed shall be retained by the election administrator and placed with the proper records when they are returned to him."

Section 9. Section 13-13-234, MCA, is amended to read:

"13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall note on the pollbook opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent, *chronically ill,* or physically incapacitated electors, *as well as those electors prevented from voting at the polls because of a sudden illness or health emergency.*

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the election administrator and the number of his ballot."

Section 10. **Special absentee election boards — members — appointment.** (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot under 13-13-201(4).

(2) In a partisan election, each special absentee election board shall consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members must reside in the county in which they serve.

(3) No member of a special absentee election board may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

Section 11. **Manner of selection.** The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

Section 12. **Oath of board members.** Before assuming any of his responsibilities under [this act], each member of a special absentee election board must take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

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Section 13. **Compensation.** (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

Section 14. **Voting performed before the special absentee election board.** (1) As provided in 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), such elector may request that a special absentee election board personally deliver a ballot to him.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except the elector must hand the marked ballot in the sealed envelope to the special absentee election board, and the board must deliver the sealed envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking his ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any such assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

Section 15. **Authorization to increase county mill levy.** Each county may levy an amount not exceeding 1 mill as may be necessary to finance the additional cost of administering a special absentee election board program pursuant to [sections 10 through 14]. Such mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by [sections 10 through 14].

Section 16. **Codification instruction.** Sections 10 through 15 are intended to be codified as an integral part of Title 13, and the provisions of Title 13 apply to sections 10 through 15.

Section 17. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

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CHAPTER NO. 240

[HB 566]

AN ACT TO RESTRICT THE INSTALLATION AND USE OF AUTOMATIC DIAL-UP SECURITY ALARM SYSTEMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Restrictions on use of certain automatic dial-up systems.** No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 60, and the provisions of Title 37, chapter 60, apply to section 1.

Section 3. **Extension of authority.** Any existing authority of the board of private security patrolmen and investigators to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 241

[HB 588]

AN ACT TO REMOVE THE REQUIREMENT THAT NEXT OF KIN MUST BE NOTIFIED WHEN A PATIENT IS ADMITTED TO AN ALCOHOLIC TREATMENT FACILITY; AMENDING SECTION 53-24-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in

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detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin *may* be notified *if the* patient *consents to such* notification."

Section 2. **Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 242

[HB 600]

AN ACT TO INCLUDE OUT-OF-STATE CONVICTIONS FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE BLOOD ALCOHOL CONCENTRATION FOR PURPOSES OF IMPOSING PENALTIES FOR SUBSEQUENT VIOLATIONS; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished

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by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days, and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, *in this state or a similar statute in another state* or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court *in this state or another state*, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

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(3) On a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses shall apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, *in this state or a similar statute in another state* or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court *in this state or another state*, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Approved March 29, 1985.

CHAPTER NO. 243

[HB 729]

AN ACT TO REDEFINE THE ROLE OF THE MONTANA CENTER FOR THE AGED AND TO PROVIDE RULEMAKING AUTHORITY TO THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH CRITERIA FOR ADMISSION, TREATMENT, AND DISCHARGE; AMENDING SECTIONS 53-21-411 THROUGH 53-21-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-411, MCA, is amended to read:

"53-21-411. Location and function of center for the aged. (1) The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons 55 years of age or older. Priority must be given to patients referred from the Montana state hospital.

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(2) Appropriate admissions to the Montana center for the aged are persons unable to maintain themselves in their homes or communities due to *a mental disorder, as defined in 53-21-102,* associated with the aging process, but who do not require the intensity of treatment available at the Montana state hospital.

(3) Admissions to the center are voluntary. The department of institutions may adopt rules concerning specific admission criteria, treatment, and discharge procedures."

Section 2. Section 53-21-412, MCA, is amended to read:

"**53-21-412. Transfer of patients between Montana state hospital and center.** *(1)* With the approval of the department of institutions, *Montana state hospital patients may be admitted to the center upon voluntary application by the patient or the patient's guardian.*

(2) A patient of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111 or involuntarily committed pursuant to 53-21-114 through 53-21-127."

Section 3. Section 53-21-413, MCA, is amended to read:

"**53-21-413. Discharge of patients.** *The* superintendent of the center may authorize the discharge of a patient residing at the center *according to rules adopted by the department of institutions. However, no patient may be detained at the center without the consent of the patient or his guardian.*"

Approved March 29, 1985.

CHAPTER NO. 244

[HB 732]

AN ACT TO AUTHORIZE THE FLATHEAD BASIN COMMISSION TO RECEIVE AND EXPEND DONATIONS, GIFTS, GRANTS, AND OTHER MONEY TO FULFILL ITS DUTIES WITHOUT APPROPRIATION BY THE LEGISLATURE; AMENDING SECTION 75-7-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-305, MCA, is amended to read:

"**75-7-305. Commission authority.** (1) The commission may make recommendations to the legislature and the governor and to federal, tribal, provincial, and local agencies for maintenance and enhancement of the quality of natural resources of the Flathead basin.

(2) *The* commission may receive and expend donations, gifts, grants, and other money necessary to fulfill its duties. *[Such money, gifts, grants, and donations are statutorily appropriated, as provided in [section 2 of House Bill No. 12].]*"

Section 2. **Coordination instruction.** The bracketed language in section 1 is effective only if House Bill No. 12 of the 49th legislature is

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passed and approved. In addition, if House Bill No. 12 is passed and approved, a reference to 75-7-305 is included in the subsection of House Bill No. 12 listing all sections containing statutory appropriations.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 245

[HB 748]

AN ACT REVISING THE CRITERIA FOR PROVIDING COMMUNITY-BASED SERVICES TO DEVELOPMENTALLY DISABLED PERSONS; PROVIDING THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY PROVIDE AVAILABLE SERVICES TO DEVELOPMENTALLY DISABLED PERSONS WHO, AFTER A SCREENING PROCESS, ARE FOUND TO BE IN NEED OF THEM; AMENDING SECTION 53-20-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-209, MCA, is amended to read:

"**53-20-209. Eligibility for services.** *(1)* Any person suspected of a developmental disability shall be eligible for *an evaluation to determine whether the person is developmentally disabled.*

(2) If the department determines through a screening process that a developmentally disabled person is in need of available services and those services can be provided to him, the department may provide services available under this part and Title 53, chapter 20, part 3."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 246

[HB 2]

AN ACT AUTHORIZING THE USE FOR 4 YEARS OF COAL SEVERANCE TAX PROCEEDS FOR DEVELOPMENT, OPERATION, AND MAINTENANCE OF ALL STATE PARKS, RECREATIONAL AREAS, MONUMENTS, OR HISTORICAL SITES; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108. Disposal of severance taxes.** Severance taxes collected under the provisions of this chapter are allocated as follows:

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(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the state special revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(f) 1% to the state special revenue fund to the credit of the county land planning account;

(g) 1 ¼% to the credit of the renewable resource development bond fund;

(h) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) *starting July 1, 1985, and ending June 30, 1989,* ⅔ for the acquisition, *development, operation, and maintenance* of *any* sites and areas described in 23-1-102 and, *after June 30, 1989, ⅔ for the acquisition of sites and areas described in 23-1-102 and* the *development,* operation, and maintenance of sites acquired *with funds allocated under this subsection*;

(i) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the state special revenue fund for conservation districts;

(k) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 247

[HB 21]

AN ACT REPEALING SECTION 60-2-101, MCA, WHICH REQUIRES THE HIGHWAY COMMISSION TO MEET ONCE EACH MONTH; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 60-2-101, MCA, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 248

[HB 245]

AN ACT PROHIBITING UNAUTHORIZED MANUFACTURE OF A MONTANA DRIVER'S LICENSE OR IDENTIFICATION CARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unlawful issuance of license or identification card.** No person may create, publish, or otherwise manufacture a Montana driver's license or a Montana identification card authorized by 61-12-501 or color facsimile thereof or create, manufacture, or possess an engraved plate or other such device for the printing of a Montana driver's license or Montana identification card authorized by 61-12-501 or color facsimile thereof, except as authorized by the division.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 5, part 3, and the provisions of Title 61, chapter 5, part 3, apply to section 1.

Approved March 29, 1985.

CHAPTER NO. 249

[HB 274]

AN ACT PERMITTING A STATE GAME WARDEN TO RETIRE AT AGE 50 RATHER THAN 55; REMOVING THE COMPULSORY RETIREMENT AGE FOR STATE GAME WARDENS; REVISING THE METHOD FOR CALCULATING THE SERVICE RETIREMENT ALLOWANCE FOR A STATE GAME WARDEN WITH OVER 25 YEARS OF SERVICE; INCREASING EMPLOYEE CONTRIBUTIONS TO THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-8-502, 19-8-601, AND 19-8-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement — commencement of allowance. (1) Any member in service who has completed at least 20 years of creditable service and who has reached the age of *50* years may retire on service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

Section 2. Section 19-8-603, MCA, is amended to read:

"19-8-603. Service retirement allowance. (1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity.

(2) The *amount of the* retirement allowance *must equal 2% of the member's final salary for each year of creditable service.*"

Section 3. Section 19-8-502, MCA, is amended to read:

"19-8-502. Member's contribution. Every member is required to contribute into the account a sum equal to *7.9%* of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account."

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Section 4. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

CHAPTER NO. 250

[HB 288]

AN ACT TO INCREASE FROM 14 DAYS TO 45 DAYS THE TIME PRIOR TO AN ELECTION THAT ABSENTEE BALLOTS MUST BE PREPARED; TO PROVIDE FOR CHANGES IN OTHER RELATED ELECTION DEADLINES TO REFLECT THE CHANGE IN THE ABSENTEE BALLOT DEADLINE; AMENDING SECTIONS 5-2-406, 7-2-2313, 7-2-4902, 7-3-149, 7-3-160, 7-3-176, 7-3-192, 7-3-4208, 7-3-4213, 7-3-4227, 7-3-4305, 7-3-4310, 7-3-4311, 7-4-2106, 7-4-2206, 7-5-136, 7-11-307, 7-13-2208, 7-13-2241, 7-13-2242, 7-13-2246, 7-13-2341, 7-33-2106, 7-34-2117, 13-10-201, 13-10-208, 13-10-325 THROUGH 13-10-327, 13-10-601, 13-12-201, 13-13-205, 13-14-118, 13-25-101, 13-25-203, 13-25-205, 13-26-103, 13-35-107, 22-1-304, 85-7-1702, AND 85-8-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-406, MCA, is amended to read:

"5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs *75* days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs *75* days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the *75th* day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the *65th* day prior to the general election.

(2) Whenever a vacancy occurs on or after the *75th* day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

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Section 2. Section 7-2-2313, MCA, is amended to read:

"7-2-2313. Procedure to hold special election. (1) Upon filing the petition or petitions, duly certified as provided in 7-2-2312, with the election administrator of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board, to be held within 10 days after the filing of the petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of 7-2-2312, it shall at the meeting, by a resolution entered in its minutes, call a special election of the registered electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

(2) The election shall be held on Tuesday and not less than *75* or more than *90* days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least 10 days before the election."

Section 3. Section 7-2-4902, MCA, is amended to read:

"7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the registered electors of a city or town equal in number to 20% of the number of electors voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order, within 60 days, that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall be not less than *75* days or more than 120 days after the board orders the election."

Section 4. Section 7-3-149, MCA, is amended to read:

"7-3-149. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held at least *75* days after the call and within 120 days of the date of filing with the records administrator under 7-3-146. The special election may be held in conjunction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

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(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form."

Section 5. Section 7-3-160, MCA, is amended to read:

"7-3-160. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify a date for the primary election not more than 120 days or less than 75 days after the election approving the new form and a date for the general election 75 days after the primary."

Section 6. Section 7-3-176, MCA, is amended to read:

"7-3-176. Election of commission members. (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study commission shall be held in conjunction with the 1984 general election date or at the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 75 days before the date of the election shall be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates shall be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissions.

(3) Candidates for study commission positions shall be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes shall be declared elected.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the chairman of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. No elected official of the local government may be appointed."

Section 7. Section 7-3-192, MCA, is amended to read:

"7-3-192. Election on recommendation. (1) An alternative plan of government recommended by a study commission shall be submitted to the

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voters as provided in 7-3-149, except that the study commission shall authorize the submission of the alternative plan of government to the voters at a special election to be held *no less than 75 or more than* 120 days *from the date* of the adoption of the final report. The special election may be held in conjunction with any regularly scheduled election. Study commissions elected on the general election date in 1984 shall submit a final report allowing for a vote on any recommendation no later than the general election date in 1986.

(2) General ballot requirements and treatment of suboptions on an alternative plan of government recommended by a study commission shall be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151."

Section 8. Section 7-3-4208, MCA, is amended to read:

"7-3-4208. Petition to organize under commission form — election required. (1) Upon a petition being filed with the city council, signed by not less than 25% of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this part be submitted to the qualified electors of such city, said city council shall thereupon and within 30 days thereafter order a special election to be held. At this election the question of reorganization of such city under the provisions of this part shall be submitted to the qualified electors of such city.

(2) Such order of the city council shall specify therein the time when such election shall be held, which must be *no less than 75 or more than* 90 days from the date of the *city council order.*"

Section 9. Section 7-3-4213, MCA, is amended to read:

"7-3-4213. Election for first city officers. (1) If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled. The order shall specify the time of holding such election, which must be *no less than 75 and no more than* 90 days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said city and also in at least 10 of the most public places in said city.

(2) Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections."

Section 10. Section 7-3-4227, MCA, is amended to read:

"7-3-4227. Abandonment of commission form. (1) Any city which has operated for more than 1 year under the provisions of this part may

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abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of the city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition is filed at least 75 days prior to the date of the election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume the special charter?"

(3) If the majority of the votes cast at such election is in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of these officers, the city shall become a city under the general law of the state, but this change may not in any manner or degree affect the property, rights, or liabilities of any nature of the city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question may not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years."

Section 11. Section 7-3-4305, MCA, is amended to read:

"7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon a petition being filed with the city or town council, signed by not less than 25% of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this part and part 44 be submitted to the qualified electors of such municipality, said city or town council shall thereupon and within 30 days thereafter order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this part and part 44 shall be submitted to the qualified electors of such municipality.

(2) Such order of the city or town council shall specify therein the time when such election shall be held, which must be *no less than 75 and no more than* 90 days from the date of *the order of the council.*"

Section 12. Section 7-3-4310, MCA, is amended to read:

"7-3-4310. Special election for municipal officers. (1) If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within 1 week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled. This order shall specify the time of holding such election, which must be *no less than 75 or more than* 90 days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the

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purpose for which such special election is held and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such municipality if there be such; otherwise, for 2 successive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

(2) Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

(3) The provisions of 7-3-4341 are to be followed in the special election, except that the date of the primary election shall be at least *85* days before the special election."

Section 13. Section 7-3-4311, MCA, is amended to read:

"7-3-4311. Procedure for multimunicipality organization. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of such county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in such community or group of communities must issue a proclamation ordering a special election to be held.

(2) At this election the question of the organization of such community or group of communities as a municipality under the provisions of this part and part 44 shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be *no less than 75 or more than* 90 days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

(3) If a majority of the legal voters at said election vote in favor of the organization of such municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said election and immediately thereafter shall give notice for 30 days in a newspaper published within the proposed municipal district or, if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners must appoint judges and clerks of election and canvass and declare the result thereof. The election must be conducted in the manner prescribed by

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law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers."

Section 14. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4).

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the *75th* day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the *75th* day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the *75th* day preceding the general election held during the fourth year of the term, the person appointed by the district judge under 7-4-2106(2) shall serve until the end of the term."

Section 15. Section 7-4-2206, MCA, is amended to read:

"7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee shall hold his office, if elective, until the next general election unless otherwise provided in subsections (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

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(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure shall be utilized as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the *75th* day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the *75th* day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the *75th* day preceding the general election held during the second year of the term, the person appointed by the commissioners under 7-4-2206(2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace shall be filled as provided in Title 3, chapter 10, part 2."

Section 16. Section 7-5-136, MCA, is amended to read:

"7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than *75* days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than *75* days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal."

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Section 17. Section 7-11-307, MCA, is amended to read:

"7-11-307. Election on service consolidation or transfer. (1) The governing bodies of each local government affected by a proposed service consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held *no less than 75 or more than* 120 days of the date of the filing of the petition under 7-11-303 or *no less than 75 or more than* 120 days of the receipt by the local government of the interlocal cooperation commission recommendation. The special election may be held in conjunction with any other election. The county election administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be shared by the affected local governments in proportionate shares as agreed to by the governing bodies of the local governments."

Section 18. Section 7-13-2208, MCA, is amended to read:

"7-13-2208. Decision on petition — election required. (1) On the final hearing, said board of county commissioners shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board of county commissioners shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district nor shall any lands which will not, in the judgment of said board of county commissioners, be benefited by such district be included within such proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated. The date of the election shall be *no less than 75 or more than 90* days from the date of the final hearing of such petition."

Section 19. Section 7-13-2241, MCA, is amended to read:

"7-13-2241. Presentation of petition of nomination. (1) A petition of nomination, consisting of not less than five individual certificates for any one candidate, may be presented to the election administrator not earlier than *90* days or later than *75* days before the election. The election administrator shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, the petition for nomination shall be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under this part and part 23."

Section 20. Section 7-13-2242, MCA, is amended to read:

"7-13-2242. Examination of petition. (1) When a petition of nomination is presented for filing to the election administrator, he shall examine the same and ascertain whether or not it conforms to the provisions of 7-13-2237 through 7-13-2247. If found not to conform thereto, he shall

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in writing designate on the petition the defect or omission or reason why the petition cannot be filed and shall return the petition to the individual named as the individual to whom it may be returned in accordance with 7-13-2240.

(2) The petition may then be amended and again presented to the election administrator as in the first instance but in no case may a petition be presented later than 75 days before the election. The election administrator shall proceed to examine the petition as hereinbefore provided."

Section 21. Section 7-13-2246, MCA, is amended to read:

"7-13-2246. Withdrawal of candidacy. (1) Any individual who has been nominated as a candidate may, not later than 75 days before the day of election, cause his name to be withdrawn from nomination by filing with the election administrator a request therefor in writing, and no name withdrawn may be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than 75 days prior to the election."

Section 22. Section 7-13-2341, MCA, is amended to read:

"7-13-2341. Addition of land to district. (1) Except as provided in subsection (5), any portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, *no less than 75 or more than 90* days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

(5) If the board of directors determines that a district has a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners, expand the district to include land in an unincorporated area, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or

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more of the members of the district petition for an election, compliance with subsections (1) and (2) is required."

Section 23. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected or appointed and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401 or appointed as provided in subsection (4) of this section. The term of office shall be 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election, including any holder of title to lands within the district who presents a proof of interest in such land at the polling place, regardless of whether he is registered to vote.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If no nominations are made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices.

(5) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Section 24. Section 7-34-2117, MCA, is amended to read:

"7-34-2117. Procedure for the conduct of election for trustees. (1) All elections of trustees following the election of the first board of trustees shall be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected."

Section 25. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of

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state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination shall be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination shall be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(5) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination shall be filed no sooner than the first business day in January of an election year for that office and no later than 5 p.m., 75 days before the date of the primary election."

Section 26. Section 13-10-208, MCA, is amended to read:

"13-10-208. Certificate of primary ballot — printing ballot. (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of his office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of his office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title."

Section 27. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed

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before an officer empowered to administer oaths. A candidate may not withdraw later than 75 days before an election.

(2) Filing fees paid by the candidate may not be refunded."

Section 28. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 29. Section 13-10-327, MCA, is amended to read:

"13-10-327. Vacancy after primary and prior to general election. (1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 65 days before the election. A candidate may not officially withdraw 75 days or less before a general election. However, if a candidate for partisan office dies less than 75 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot."

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Section 30. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state."

Section 31. Section 13-12-201, MCA, is amended to read:

"13-12-201. Secretary of state to certify ballot. (1) *Seventy-five* days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and ballot issues as shown in the official records of his office, which must include the notification specified in 13-37-126, and shall have the official ballots printed."

Section 32. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ballots to be available. The election administrator shall ensure that ballots are printed and available for absentee voting at least *45* days prior to an election."

Section 33. Section 13-14-118, MCA, is amended to read:

"13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before

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the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law."

Section 34. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state no later than 75 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot."

Section 35. Section 13-25-203, MCA, is amended to read:

"13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term shall be held *no less than 75 or more than* 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term."

Section 36. Section 13-25-205, MCA, is amended to read:

"13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 75 days before the date set for the election.

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(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the *75th* day before the election."

Section 37. Section 13-26-103, MCA, is amended to read:

"13-26-103. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than 100 voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than *75* days prior to the election."

Section 38. Section 13-35-107, MCA, is amended to read:

"13-35-107. Voiding election. (1) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held within *75* days of that finding. If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question."

Section 39. Section 22-1-304, MCA, is amended to read:

"22-1-304. Tax levy — special library fund — bonds. (1) The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 5 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 7 mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) (a) The governing body of any city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors thereof at the next general election. Such resolution must be adopted at least *75* days prior to the general election at which the question will be voted on.

(b) Upon petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of exceeding the maximum mill levy. Such petition must be delivered to the governing body at least 90 days prior to the general election at which the question will be voted on.

(c) The question shall be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ...

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mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the year in which the vote was taken; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library.

(5) No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor."

Section 40. Section 85-7-1702, MCA, is amended to read:

"85-7-1702. Regular election — term of office. (1) Candidates for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least *75* days before the election and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote.

(2) The regular election for commissioners in each district shall be held annually in accordance with 13-1-104 and 13-1-401.

(3) Within 40 days following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the date of the organizational meeting after the regular election and shall continue for 3 years and until the election and qualification of his successor.

(4) Commissioners are elected by the electors of the entire district."

Section 41. Section 85-8-306, MCA, is amended to read:

"85-8-306. Nominations. Candidates for the office of commissioner to be filled by election may be nominated by petition filed with the election

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administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. This section does not prevent an elector from voting for any qualified person, although the name does not appear on the official ballot."

Section 42. **Effective date.** This act is effective January 1, 1986.

Approved March 29, 1985.

CHAPTER NO. 251

[HB 339]

AN ACT TO AMEND TERMINATION PROVISIONS FOR TAX INCREMENT FINANCING BY ALLOWING TAX INCREMENT PROJECTS ADOPTED PRIOR TO 1980 TO HAVE A MINIMUM LIFE OF 12 YEARS INSTEAD OF 10 YEARS AND TO DELETE THE REQUIREMENT THAT NO FURTHER BONDING MAY OCCUR AFTER APRIL 29, 1987; AMENDING SECTION 7-15-4292, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4292, MCA, is amended to read:

"7-15-4292. Termination of tax increment financing. (1) The tax increment provision shall terminate upon *the later of:*

(a) the 10th year following its adoption *or, if the tax increment provision was adopted prior to January 1, 1980, upon the 12th year following adoption;* or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area and shall be paid into the funds of the respective taxing bodies.

(4) No bonds with tax increment provisions for the repayment thereof may be issued subsequent to *the 10th anniversary of tax increment provisions adopted after January 1, 1980, and the 12th anniversary of tax increment provisions adopted prior to January 1, 1980.*"

Approved March 29, 1985.

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CHAPTER NO. 252

[HB 371]

AN ACT TO REMOVE THE PROVISION ALLOWING SECURITY INTERESTS TO BE FILED AGAINST PARTS OF MOTOR VEHICLES; REPEALING SECTION 61-3-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 61-3-104, MCA, is repealed.

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved March 29, 1985.

CHAPTER NO. 253

[HB 373]

AN ACT DEFINING "ASSESSMENT BOOK" TO INCLUDE COMPUTER SYSTEMS OPERATING AS ASSESSMENT BOOKS; AMENDING SECTION 15-8-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-701, MCA, is amended to read:

"15-8-701. Assessment book — definition — listing property in. *(1) Unless the context clearly indicates otherwise, the term "assessment book" means the record kept in each county by the agent of the department of revenue and which contains the information described in subsection (3). The term includes, in a county wherein the assessment book is kept on a computer system, the information on the system analogous to the information described in subsection (3).*

(2) The form of the assessment book must be as directed by the department.

(3) The department must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state and in which must be specified, in separate columns under the appropriate head:

(a) the name of the person to whom the property is assessed;

(b) land, by township, range, section or fractional section, and when such land is not a United States land division or subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of

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the number of acres, not exceeding in each and every tract 640 acres, locality, and the improvements thereon;

(c) city and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;

(d) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

(e) the assessed value of real estate other than city or town lots;

(f) the assessed value of city and town lots with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under 15-8-111;

(g) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, may be assessed against the exempt land, nor under any circumstances may the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

(h) the assessed value of all taxable personal property;

(i) the school, road, and other revenue districts in which each piece of property assessed is situated;

(j) the total assessed value of all property."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 254

[HB 380]

AN ACT ELIMINATING NONDUPLICATION PROVISIONS FROM RURAL COOPERATIVE UTILITIES LAW; AMENDING SECTIONS 35-18-105 AND 35-18-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-105, MCA, is amended to read:

"35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

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(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the purposes of making generally available in rural areas adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof."

Section 2. Section 35-18-106, MCA, is amended to read:

"**35-18-106. Powers of cooperatives.** A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

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(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems in rural areas and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

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(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized."

Approved March 29, 1985.

CHAPTER NO. 255

[HB 406]

AN ACT TO INCREASE CERTAIN HUNTING AND FISHING LICENSE FEES; AMENDING SECTIONS 87-2-301, 87-2-302, 87-2-304, 87-2-306, 87-2-505, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-301, MCA, is amended to read:

"87-2-301. Class A—resident fishing license. Any resident, as defined by 87-2-102, upon payment of a fee of *$9*, shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department."

Section 2. Section 87-2-302, MCA, is amended to read:

"87-2-302. Class B—nonresident fishing license. Any person not a resident, as defined in 87-2-102, upon payment of the sum of *$35* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department."

Section 3. Section 87-2-304, MCA, is amended to read:

"87-2-304. Class B-4—two-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of *$8* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a 2-day nonresident fishing license which shall authorize the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license."

Section 4. Section 87-2-306, MCA, is amended to read:

"87-2-306. Paddlefish tags. The department may issue paddlefish tags to holders of valid Class A, Class B, and Class B-4 fishing licenses for a fee of *$3 for residents and $10 for nonresidents*. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department."

Section 5. Section 87-2-505, MCA, is amended to read:

"87-2-505. Class B-10—nonresident big game combination license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of *$350* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

Section 6. Section 87-2-711, MCA, is amended to read:

"87-2-711. Class AAA—sportsman's license. Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of *$36*, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal."

Section 7. **Extension of authority.** Any existing authority of the fish and game commission or the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective March 1, 1986.

Approved March 29, 1985.

CHAPTER NO. 256

[HB 414]

AN ACT REVISING THE SALARY, WORK PERIOD, AND OVERTIME COMPENSATION PROVISIONS OF EMPLOYEES OF A LOCAL DEPARTMENT OF PUBLIC SAFETY; PROVIDING MINIMUM SALARIES BASED ON DEPUTY SHERIFF COMPENSATION, WITH EXCEPTIONS; PROVIDING FOR A WORK PERIOD DESIGNATION TO REPLACE THE WORKWEEK; PROVIDING THAT EMPLOYEES' RATE OF OVERTIME MAY BE ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTIONS 7-32-104 AND 39-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-104, MCA, is amended to read:

"7-32-104. Salaries. The provisions of 7-4-2503 notwithstanding, the salaries of the director and employees of the department of public safety

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shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. *The salary of the director may* not be less than *that* specified *for the sheriff* in 7-4-2503. *The salaries of employees may not be less than the salaries specified in 7-4-2508 and 7-4-2510; however, employees are not required to be paid any fixed percentage of the director's or sheriff's salary.*"

Section 2. **Work period in lieu of workweek — overtime compensation.** (1) (a) A department of public safety may establish a work period other than the workweek provided in 7-32-2111 or 39-3-405 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any employee who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by the board of county commissioners.

Section 3. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

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(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

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(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(n) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(o) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(q) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(r) an employee of a department of public safety working under a work period established pursuant to [section 2]."

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

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CHAPTER NO. 257

[HB 470]

AN ACT ALLOWING A TOWN OR THIRD-CLASS CITY TO SPEND 25 PERCENT OF ITS GASOLINE AND VEHICLE FUELS TAX ALLOCATION ON ROAD MAINTENANCE AND REPAIR, AND MAINTENANCE EQUIPMENT AND SUPPLIES; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the state special revenue fund to the credit of the department of highways. Those funds hereinbelow allocated to cities, towns, and counties shall be paid by the department of highways from the state special revenue fund to such cities, towns, and counties.

(1) $14,000,000 of the funds collected under this chapter shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $6,350,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $7,650,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive

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of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto, *except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.*

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) *Except by a town or third-class city as provided in subsection (2), none* of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only."

Section 2. **Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

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CHAPTER NO. 258

[HB 478]

AN ACT REVISING THE PENALTY AND INTEREST PROVISIONS FOR FAILING, NEGLECTING, OR REFUSING TO FILE OIL AND GAS SEVERANCE TAX REPORTS; AMENDING SECTIONS 15-36-105 AND 15-36-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-105, MCA, is amended to read:

"15-36-105. Statement to accompany payment — records — collection of tax — refunds. (1) Each and every person must, within 60 days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by such person in the state during each month of such quarter and during the whole quarter, the average value thereof during each month, and the total value thereof for the whole quarter, together with the total amount due to the state as severance taxes for such quarter, and must within such 60 days deliver such statement and, except as provided in 15-36-121, pay to the department the amount of the taxes shown by such statement to be due to the state for the quarter for which such statement is made. Such statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any such person engaged in carrying on such business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all thereof in one statement. The department shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department to examine each of such statements and compute the taxes thereon, and the amount so computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency shall be mailed by the department to such taxpayer. If the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax

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under this chapter is not paid when due, interest shall be added thereto at the rate of 1% a month or fraction thereof, computed on the total amount of severance tax and penalty from the due date until paid."

Section 2. Section 15-36-107, MCA, is amended to read:

"**15-36-107. Procedure to compute tax in absence of statement — penalty and interest.** If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter and during each month thereof and the average value thereof during each such month and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of *10%* thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The *10%* penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 259

[HB 484]

AN ACT TO PROVIDE A METHOD FOR CORRECTING ERRONEOUS PROPERTY DESCRIPTIONS OF A COUNTY WATER AND SEWER DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Correction of erroneous property description.** (1) As provided in this section, the board of directors of any district may correct an erroneous property description of land within the district.

(2) The board of directors shall by resolution:

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(a) set forth the current property description and the proposed property description;

(b) set a date for a public hearing to be held on the proposed property description; and

(c) provide that the property description change is intended only for the purpose of correcting an erroneous land description.

(3) A copy of the resolution adopted pursuant to subsection (2) must be posted in three public places in the district and mailed to the owner or owners of record of the property described in subsection (2)(a).

(4) After hearing comments and receiving written consent by the owner or owners of the property described in subsection (2)(a) at the public hearing, the board of directors may by resolution adopt the proposed property description as the correct property description. The correct property description is effective upon filing a copy of the resolution with the county clerk and recorder of the county or counties in which the district is located.

Section 2. **Codification instruction.** This act is intended to be codified as an integral part of Title 7, chapter 13, parts 22 and 23, and the provisions of Title 7, chapter 13, parts 22 and 23, apply to this act.

Approved March 29, 1985.

CHAPTER NO. 260

[HB 561]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COSMETOLOGY; AMENDING SECTIONS 37-31-101, 37-31-304, 37-31-305, 37-31-308, 37-31-312, AND 37-31-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-101, MCA, is amended to read:

"**37-31-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, or hands. The practice and teaching of cosmetology shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of

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cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Section 2. Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before one may practice or teach cosmetology or a person, firm, partnership, or corporation may operate a school of cosmetology, the person, firm, partnership, or corporation must obtain a license or certificate of registration from the department.

(2) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age, a graduate of the 8th grade, and of good moral character. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board of public education.

(3) The person qualified *shall* file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology."

Section 3. Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(2) (a) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of *650* hours of student teacher training; or

(b) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination."

Section 4. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice *or teach cosmetology* shall be held at *places and times* specified by the board. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass *the* examination *for a license to practice cosmetology* may not apply to retake the examination:

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(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to teach cosmetology must wait 1 year before reapplying to take the examination. Upon reapplying, the applicant must provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(4) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 5. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetology establishment in the state."

Section 6. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee

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may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a teacher's license but not actively engaged either full-time or part-time in teaching cosmetology during the preceding year may renew the license by paying the required fee. A person holding a teacher's license but not actively engaged in teaching cosmetology either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a teacher's license and not actively engaged either full-time or part-time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

Section 7. **Extension of authority.** Any existing authority of the board of cosmetologists to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

CHAPTER NO. 261

[HB 564]

AN ACT AMENDING SECTION 7-6-4302, MCA, TO ALLOW CITIES AND TOWNS TO PAY ACCOUNTS AND DEMANDS BY CHECK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4302, MCA, is amended to read:

"7-6-4302. Payment of claims by warrant or check. Except as provided in 7-6-4121, all accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. *The demand must be paid in accordance with one of the following options:*

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(1) The mayor *may* draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk must pay the warrant out of the proper fund.

(2) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the check."

Approved March 29, 1985.

CHAPTER NO. 262

[HB 581]

AN ACT TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE AVICULTURAL PERMITS FOR THE TAKING OF MIGRATORY GAME BIRDS FOR PROPAGATION PURPOSES; AMENDING SECTION 87-4-902, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Taking migratory game birds for propagation — avicultural permit.** (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101(7), for the purpose of propagation. Before issuing an avicultural permit, the department must determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit

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as provided in this section become the private property of the holder of the permit who propagates such migratory game birds, and the owner may sell or transfer such birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing such permit.

(5) The department shall adopt rules implementing this section.

Section 2. Section 87-4-902, MCA, is amended to read:

"87-4-902. Exemption. This part does not apply to:

(1) a person who owns, controls, or propagates game birds for purposes other than sale or conveyance of game birds or parts thereof and who notifies the department and receives its written authorization and exemption; *or*

(2) the holder of a migratory game bird avicultural permit under [section 1]."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87 apply to section 1.

Section 4. **Termination.** This act terminates September 30, 1989.

Approved March 29, 1985.

CHAPTER NO. 263

[HB 618]

AN ACT TO RAISE THE LEGAL INTEREST RATE FROM 6 PERCENT TO 10 PERCENT A YEAR; AMENDING SECTION 31-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-106, MCA, is amended to read:

"31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or 31-1-111 and 31-1-112, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of *10%* a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

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(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

Approved March 29, 1985.

CHAPTER NO. 264

[HB 653]

AN ACT INCREASING THE SALARIES OF COUNTY COMMISSIONERS IN THE SMALLER COUNTIES TO $60 A DAY; PROVIDING A COST-OF-LIVING INCREASE FORMULA; PROVIDING AN INCREASE IN SALARY FOR PERSONS MAKING ROAD INSPECTIONS; AMENDING SECTIONS 7-4-2107 AND 7-14-2126, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2107, MCA, is amended to read:

"7-4-2107. Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000.

(2) Each member of the board in all other counties is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. *For the fiscal year beginning July 1, 1985, the salary is $60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by adding to the amount of $60 an increment calculated as provided in 7-4-2504.*

(3) This section does not apply to counties that have adopted a charter form of government."

Section 2. Section 7-14-2126, MCA, is amended to read:

"7-14-2126. Compensation for making inspections. The person or persons making the inspections authorized by 7-14-2125 shall receive *a daily salary equal to that established in 7-4-2107(2)* and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved March 29, 1985.

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CHAPTER NO. 265

[HB 685]

AN ACT TO ALLOW THE TRUSTEES OF ANY SCHOOL DISTRICT THE OPTION TO CONSIDER VARIOUS FUNDS REAPPROPRIATED FROM A PREVIOUS SCHOOL FISCAL YEAR, RATHER THAN TO ANTICIPATE SUCH FUNDS, WHEN REPORTING MONEY AVAILABLE FOR REDUCTION OF A DISTRICT'S GENERAL FUND LEVIES; AMENDING SECTIONS 20-9-141, 20-9-331, 20-9-333, AND 20-9-352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303, the district's permissive levy amount as provided in 20-9-352, and any additional levies authorized by the electors of the district under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated *or reappropriated* state impact aid received under the provisions of 20-9-304;

(v) anticipated *or reappropriated* motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(vi) anticipated interest to be earned *or reappropriated interest earned* by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(vii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

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(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total levy requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 2. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)*(e)* below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

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(e) any federal or state money, including anticipated *or reappropriated* motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 3 Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys, including anticipated *or reappropriated* motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 4. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program

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amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated *or reappropriated* motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of 20-9-351 and subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of 20-9-351 and subsection (3) of this section. The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account [program] for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium.

(3) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1985.

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CHAPTER NO. 266

[HB 746]

AN ACT AUTHORIZING AN ASSESSMENT OPTION BASED UPON WATER METER SIZE TO BE USED IN ASSESSING COSTS IN FIRE HYDRANT MAINTENANCE DISTRICTS; AMENDING SECTION 7-12-4611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4611, MCA, is amended to read:

"7-12-4611. Resolution for assessment — assessment options. The city or town council shall estimate, as nearly as practicable, the entire cost of installing and maintaining fire hydrants each year and the portion thereof to be assessed against the property within the district. Before the first Monday in October, the council must pass and finally adopt a resolution levying and assessing the property within the district. The city or town council, for the purpose of making the assessment, shall adopt one of the following methods:

(1) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district bordering or abutting on the streets where fire hydrants are located to be assessed in its lineal proportion to the total lineal feet bordering or abutting on such streets.

(3) If the city council determines that the area, frontage, or combination options are inequitable, it may assess the cost of fire hydrant installation and maintenance:

(a) against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost that its taxable valuation, including improvements, bears to the taxable valuation of the entire district; *or*

(b) against the entire district, each lot or parcel of land receiving service within the district to be assessed by apportioning the whole cost according to a ratio between the water meter size servicing each lot or parcel and the whole cost."

Approved March 29, 1985.

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CHAPTER NO. 267

[HB 800]

AN ACT TO REQUIRE THAT THE STATE'S ACCOUNTING SYSTEM BE ESTABLISHED AND STATE AGENCY FINANCIAL RECORDS AND REPORTS BE PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND AMENDING SECTIONS 17-1-102 AND 17-2-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-102, MCA, is amended to read:

"17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property *in accordance with generally accepted accounting principles*, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor, and additional copies shall be retained in the office of the department for inspection by the members of the legislature.

(3) The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.

(4) All state agencies, including units of the university system and the vocational-technical centers, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances which are required by generally accepted accounting principles to be reported as a reservation of fund balance shall be recorded as expenditures and liabilities on the accounting records."

Section 2. Section 17-2-110, MCA, is amended to read:

"17-2-110. Fiscal year and financial reports. (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

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(2) At the close of each fiscal year the fiscal records of each state office, department, bureau, commission, institution, university unit, *vocational--technical center*, and agency (hereinafter collectively referred to as "state agency") shall be closed as of the end of the fiscal year. Each state agency shall prepare such financial statements and reconciliations for the fiscal year as the department of administration may prescribe. These financial reports are to be completed and distributed not more than 31 days following the close of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity therefor.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency *in accordance with generally accepted accounting principles* so that the reports can be effectively utilized by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration will be available for other individuals and organizations interested in the financial affairs of the state of Montana."

Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1985.

CHAPTER NO. 268

[HB 831]

AN ACT REDEFINING THE OFFENSE OF INTIMIDATION TO LIMIT THE OFFENSE TO A THREAT TOWARD ANOTHER PERSON UNDER CIRCUMSTANCES WHICH REASONABLY TEND TO PRODUCE A FEAR THAT THE THREAT WILL BE ACCOMPLISHED; REVISING STATUTORY LANGUAGE TO CONFORM WITH THE REQUIREMENTS OF WURTZ V. RISLEY, 719 F2D 1438 (9TH CIR. 1983); AND AMENDING SECTION 45-5-203, MCA.

WHEREAS, section 45-5-203, MCA, provides that a person commits the offense of intimidation when, with the purpose to cause another to perform or omit the performance of any act, he communicates to another a threat to commit an act; and

WHEREAS, the language in section 45-5-203, MCA, is not narrowly drawn to punish only those threats that have a reasonable tendency to produce or instill fear in the victim, which threats traditionally have been punishable; and

WHEREAS, in Wurtz v. Risley, 719 F2d 1438 (9th Cir. 1983), the U.S. Ninth Circuit Court of Appeals held that subsection 45-5-203(1)(c), MCA, is aimed at "pure speech" rather than conduct; has an overbreadth that is

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real and substantial in relation to the statute's legitimate sweep; has a chilling effect forbidden by the first amendment of the U.S. Constitution; and, in the absence of any narrowing construction or tightly drawn language, is void on its face for overbreadth; and

WHEREAS, in its holding in Wurtz v. Risley, the court said that the statutory language of subsection 45-5-203(1)(c), MCA, applied so broadly to threats of minor infractions, threats not reasonably likely to induce a belief that the threats would be carried out, and threats unrelated to any induced or threatened action, that a great deal of protected speech was brought within the statute; and

WHEREAS, the court in Wurtz v. Risley did not address the issue of overbreadth in the remainder of section 45-5-203, MCA, but in its dicta said that a threat must be distinquished from what is constitutionally protected speech, and that threats punishable without violation of the first amendment must contain the reasonable tendency that the threat will produce or instill in the victim fear that the threat will be carried out; and

WHEREAS, section 45-5-203, MCA, may contain language that defines elements of the offense of intimidation so that the statute applies too broadly or infringes on protected speech.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend section 45-5-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-203, MCA, is amended to read:

"**45-5-203. Intimidation.** (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, *under circumstances which reasonably tend to produce a fear that it will be carried out,* a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; *or*

(c) commit any *felony.*

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Approved March 29, 1985.

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CHAPTER NO. 269

[SB 146]

AN ACT TO EXPAND THE LICENSING QUALIFICATIONS OF REAL ESTATE BROKERS AND SALESMEN BY INCLUDING CLASSROOM TRAINING OR EQUIVALENT; TO ALLOW THE BOARD OF REALTY REGULATION TO PRESCRIBE BY RULE CONTINUING EDUCATION REQUIREMENTS NOT TO EXCEED 15 CLASSROOM OR EQUIVALENT HOURS IN ANY 2-YEAR PERIOD; AMENDING SECTIONS 37-51-204 AND 37-51-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-204, MCA, is amended to read:

"37-51-204. Educational programs and continuing education. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees."

Section 2. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement;

(d) file an application for license with the department; *and*

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(e) furnish written evidence that he has completed 60 classroom or equivalent hours (in addition to those required to secure a salesman's license) in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) file an application for license with the department; *and*

(iv) furnish written evidence that he has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate."

Section 3. **Extension of authority.** Any existing authority of the board of realty regulation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 270

[SB 196]

AN ACT REVISING THE LAWS RELATING TO STATE PURCHASES FROM SHELTERED WORKSHOPS; AMENDING SECTIONS 18-5-102 AND 18-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-5-102, MCA, is amended to read:

"18-5-102. Duties and powers of department of administration. (1) The department shall *maintain a current list* of *facilities located in this*

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state, including a list of products and services provided by each facility, based on information provided by the facilities. A facility requesting to be included on the list shall indicate the products and services *available from it and shall provide the department with updated information, as necessary.*

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to insure equal opportunity in obtaining orders.

(3) The department shall adopt, revise, and amend rules to implement 18-5-101 through 18-5-103 in accordance with the procedures of the Montana Administrative Procedure Act."

Section 2. Section 18-5-103, MCA, is amended to read:

"18-5-103. Procurement requirements. State departments, institutions, and agencies *may* procure listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply to purchases made in accordance with 18-5-101 through 18-5-103."

Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 271

[SB 223]

AN ACT PROVIDING FOR THE FILING OF WATER RIGHT TRANSFER CERTIFICATES WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-421, 85-2-424, AND 85-2-426, MCA; REPEALING SECTION 85-2-425, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-421, MCA, is amended to read:

"85-2-421. Purpose. The purpose of 85-2-421 through 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be *filed* with the *department* and that the *department* notify the water court *and the county clerk and recorder* of each transfer *filed.*"

Section 2. Section 85-2-424, MCA, is amended to read:

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"**85-2-424. Filing.** (1) The *transferor* of a water right or *his agent or representative* shall *file* with the *department* a water right transfer certificate *within 60 days of recording a deed or other instrument evidencing a transfer of real property.*

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall *send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer.*

(4) The *department* shall send a *reference* copy of the water right transfer certificate to the office of the chief water judge *and to the county clerk and recorder in the county in which the transfer occurred.*"

Section 3. Section 85-2-426, MCA, is amended to read:

"**85-2-426. Fee.** (1) The board of natural resources and conservation shall by rule prescribe a fee that *will be no higher than necessary to* cover the cost to the department *and the county clerk and recorder* in processing the transfer certificate. The fee must be paid at the time of *filing* of the water right transfer certificate.

(2) *The* fee *must* be deposited in the water right appropriation account provided for in 85-2-318."

Section 4. **Penalty.** (1) The transferor of a water right is responsible for the filing of a water right transfer certificate with the department in accordance with 85-2-424.

(2) A person who violates 85-2-424(1) is liable for a civil penalty of not more than $50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318.

Section 5. **Extension of authority.** Any existing authority of the board or department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Repealer.** Section 85-2-425, MCA, is repealed.

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Section 7. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, apply to section 4.

Section 8. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 272

[SB 263]

AN ACT PROVIDING THAT A LAPSED OCCUPATIONAL OR PROFESSIONAL LICENSE WHICH IS NOT RENEWED WITHIN 3 YEARS OF THE MOST RECENT RENEWAL DATE AUTOMATICALLY TERMINATES AND MAY NOT BE RENEWED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Nonrenewal of license for three years — termination.** Unless otherwise provided by statute or rule, a lapsed occupational or professional license that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.

Approved April 1, 1985.

CHAPTER NO. 273

[SB 274]

AN ACT PROVIDING THAT GROUNDS FOR DISCIPLINARY ACTION AGAINST A HOLDER OF AN OCCUPATIONAL OR PROFESSIONAL LICENSE ARE GROUNDS FOR DENIAL OF A LICENSE OR ISSUANCE OF A PROBATIONARY LICENSE TO AN APPLICANT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Grounds for disciplinary action as grounds for license denial — conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of commerce against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

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(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 1, part 1.

Approved April 1, 1985.

CHAPTER NO. 274

[SB 342]

AN ACT ELIMINATING THE APPRENTICESHIP REQUIREMENTS AS A PREREQUISITE FOR OBTAINING A CERTIFICATE OF REGISTRATION TO PRACTICE BARBERING; AMENDING SECTIONS 37-30-101, 37-30-203, 37-30-301, 37-30-303, AND 37-30-305 THROUGH 37-30-307, MCA; AND REPEALING SECTION 37-30-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

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(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 2. Section 37-30-203, MCA, is amended to read:

"37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

Section 3. Section 37-30-301, MCA, is amended to read:

"37-30-301. Certificate required. (1) Except as provided in subsection (2), a person may not practice or attempt to practice barbering unless he first receives from the department a certificate of registration.

(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer."

Section 4. Section 37-30-303, MCA, is amended to read:

"37-30-303. Qualifications — application. (1) A person is qualified to receive a certificate of registration to practice barbering only if he:

(a) has *completed 2,000 hours of instruction at a licensed barber school or college or other school recognized by the board and graduated from a licensed barber school or college or other school recognized by the board*;

(b) has successfully passed the examination conducted by the department under 37-30-305, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An applicant must file with the department an application setting forth the following information:

(a) full name and age of the applicant;

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(b) name and place of the licensed barber school *or college* or other school which he attended;

(c) dates of attendance at the licensed barber school *or college* or other school;

(d) whether the applicant received a certificate of graduation from a licensed barber school *or college* or other school; and

(e) other information the board considers necessary."

Section 5. Section 37-30-305, MCA, is amended to read:

"37-30-305. Examination. *Except as provided in 37-30-309, an applicant for a barber's certificate of registration* must apply to the department to take the examination for a barber's certificate of registration."

Section 6. Section 37-30-306, MCA, is amended to read:

"37-30-306. Communicable disease — physician's certificate required. (1) A barber *or* barber instructor may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing or teaching barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber instructor, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber *or* barber instructor, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber *or* barber instructor is no longer afflicted with the communicable, infectious, or contagious disease."

Section 7. Section 37-30-307, MCA, is amended to read:

"37-30-307. Fees — handicapped persons exempted — other fees prohibited. *(1)* The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

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(3) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) No other or additional license or fee may be imposed on barbers by a municipality or other subdivision of this state."

Section 8. **Repealer.** Section 37-30-304, MCA, is repealed.

Section 9. **Extension of authority.** Any existing authority of the board of barbers to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 275

[SB 404]

AN ACT PERMITTING THE BOARD OF REALTY REGULATION TO CHANGE THE ANNUAL RENEWAL AND AUTOMATIC CANCELLATION DATES FOR REAL ESTATE BROKER'S AND SALESMAN'S LICENSES; AMENDING SECTION 37-51-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-310, MCA, is amended to read:

"37-51-310. Annual renewal. *(1) Except as provided in subsection (2), annual* fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1)."

Approved April 1, 1985.

CHAPTER NO. 276

[HB 254]

AN ACT REQUIRING PROFILE PHOTOGRAPHS ON A DRIVER'S LICENSE IDENTIFICATION CARD ISSUED TO A PERSON UNDER 19 YEARS OF AGE; AMENDING SECTION 61-5-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration — fees — disposition. (1) The division shall

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have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the division provides driver licensing services 3 days or more a week the division is responsible for sale of receipts and may not appoint an agent. The division, upon receipt of payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a *full-face* photograph of the licensee in the size and form as prescribed by the division, *except as provided in subsection (4);* a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. Five percent of the license fees collected by the county treasurer shall be deposited by the county treasurer for the use of the county general fund. In the event no agent is appointed under this section, 5% of the license fees collected by the division shall be retained by the division to defray the cost of handling.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight and may also in the division's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be considered to have applied for renewal of a Montana operator's or chauffeur's license if the application is made within 3 months of the expiration of his license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 19 years must contain a photograph of the licensee's profile.

(5) Whenever the division issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(6) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. A license is not valid for the operation of a motorcycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(7) Fees for driver's licenses shall be as follows:

(a) driver's license — $2 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof.

(8) The county treasurer or other agent of the division collecting such fees shall retain 5% of each fee for the use of the county general fund and shall transmit the remainder to the state treasurer, who shall deposit to the credit of the state general fund all money received by him from the collection of the fees."

Section 2. **Coordination instruction.** If Article II, section 14, of the Montana constitution is amended by the electorate to permit the legislature to establish 21 years as the legal age for consuming alcoholic beverages, the phrase "19 years" in 61-5-111(4) must be changed to "21 years".

Section 3. **Applicability.** This act applies to persons who make an original application for a Montana driver's license on or after July 1, 1985, and to persons under the age of 19 years who renew a driver's license on or after July 1, 1985. If Article II, section 14, of the Montana constitution is amended by the electorate to permit the legislature to establish 21 years as the legal drinking age, this act applies to persons under the age of 21 years who renew a driver's license.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 277

[HB 283]

AN ACT INCREASING DRIVER'S LICENSE AND DUPLICATE DRIVER'S LICENSE FEES; PROVIDING THAT THE INCREASE IN THESE FEES BE DEPOSITED INTO THE MONTANA HIGHWAY PATROLMEN'S RETIREMENT PENSION TRUST FUND; AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404, 20-7-504, 61-5-111, AND 61-5-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration — fees. (1) The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the division provides driver licensing services 3 days or more a week the division is responsible for sale of receipts and may not appoint an agent. The division, upon receipt of payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a photograph of the licensee in the size and form as prescribed by the division, a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of

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the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight and may also in the division's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be considered to have applied for renewal of a Montana operator's or chauffeur's license if the application is made within 3 months of the expiration of his license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) Whenever the division issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(5) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. A license is not valid for the operation of a motorcycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(6) Fees for driver's licenses shall be as follows:

(a) driver's license — *$3* per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof."

Section 2. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate licenses. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon the payment of a fee of *$5* obtain a duplicate or substitute thereof, upon furnishing proof satisfactory to the division that such permit or license has been lost or destroyed."

Section 3. **Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(6)(a), motorcycle endorsements provided for in 61-5-111(6)(b), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the Montana highway patrolmen's retirement pension trust fund.

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(b) (i) If the fees are collected by a county treasurer or other agent of the division, the amount of 3 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the division, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the division to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the division, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the division, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the division to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 ⅓% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of 40% of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the division, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), and (1)(e).

(b) If fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the division, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), and (1)(e).

Section 4. Section 15-1-501, MCA, is amended to read:

"15-1-501. (Effective July 1, 1985—Applicable to tax years beginning after December 31, 1984) Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) *fees from* driver's *licenses, motorcycle endorsements, and duplicate driver's licenses as provided in [section 3]*;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone [company] license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(4) Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the state special revenue fund. After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund."

Section 5. Section 19-6-401, MCA, is amended to read:

"**19-6-401. Payments into retirement fund.** All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, all interest on and increase of the investments and moneys under this account, *and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in [section 3]* shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement pension trust fund."

Section 6. Section 19-6-404, MCA, is amended to read:

"**19-6-404. State's contribution.** *(1)* The state of Montana shall annually contribute to the account an amount equal to 16.57% of the salaries paid to the highway patrolmen who are covered by this account from the general fund. *In addition, the state shall contribute to the account a portion of the fees from driver's licenses and duplicate driver's licenses as provided in [section 3].*

(2) The department shall credit all fees deposited as provided in [section 3] as part of the state's contribution required in subsection (1)."

Section 7. Section 20-7-504, MCA, is amended to read:

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"20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines and forfeitures collected in any court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) *A portion* of all money from the collection of *fees from* driver's *licenses, motorcycle endorsements, and duplicate driver's licenses* shall be contributed to the traffic education account *as provided in [section 3]*."

Section 8. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 61, chapter 5.

Section 9. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 278

[HB 291]

AN ACT REVISING PROVISIONS CONCERNING THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM; DEFINING RETIREMENT BENEFITS AVAILABLE UPON THE DEATH OF A PATROLMAN TO HIS SURVIVING SPOUSE, DEPENDENT CHILD, DESIGNATED BENEFICIARY, OR ESTATE; DEFINING THE REFUND AVAILABLE TO CERTAIN PATROLMEN UPON RESIGNATION; INCREASING THE SERVICE RETIREMENT ALLOWANCE FOR CERTAIN MEMBERS; INCREASING THE EMPLOYEE'S AND STATE'S CONTRIBUTIONS TO THE RETIREMENT SYSTEM; DEFINING THE ELIGIBILITY REQUIREMENTS FOR SERVICE RETIREMENT FOR A PATROLMAN HIRED AFTER JULY 1, 1985; PROVIDING PAYMENT OF A RETIREMENT ALLOWANCE TO CERTAIN HIGHWAY PATROLMEN WHO HAVE BEEN DISCONTINUED FROM SERVICE AFTER COMPLETING 5 YEARS OR MORE OF SERVICE; AMENDING SECTIONS 19-6-101, 19-6-402 THROUGH 19-6-404, 19-6-501 THROUGH 19-6-503, AND 19-6-601 THROUGH 19-6-604, MCA; REPEALING SECTION 19-6-701, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

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(1) "Account" means the Montana highway patrolmen's retirement pension trust fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means *a surviving spouse or dependent child or, if there is no surviving spouse or dependent child,* a person nominated to receive benefits under *19-6-602.*

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

(8) "Dependent child" means an unmarried child of a deceased retired patrolman, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(9) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(10) "Member" means a person who has accumulated deductions in the account standing to his credit.

(11) "Member's annuity" means payments for life derived from contributions made by the member.

(12) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(13) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol or 60 years of age, whichever occurs first.

(14) "Retirement allowance" means the state annuity plus the member's annuity.

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(15) "State annuity" means payments for life derived from contributions made by the state of Montana.

(16) "Surviving spouse" means the spouse married to a retired patrolman at the time of the retired patrolman's death."

Section 2. Section 19-6-402, MCA, is amended to read:

"19-6-402. Member's contribution. Every member shall be required to contribute into the account a sum equal to *6.59%* of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account."

Section 3. Section 19-6-403, MCA, is amended to read:

"19-6-403. Refund of member's contribution. *(1) If* a member is discharged for cause before becoming entitled to a retirement allowance, the deductions standing to his credit shall be paid to him.

(2) If a member resigns of his own volition before becoming entitled to a retirement allowance, his accumulated deductions shall be paid to him."

Section 4. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to *18.58%* of the salaries paid to the highway patrolmen who are covered by this account from the general fund."

Section 5. Section 19-6-501, MCA, is amended to read:

"19-6-501. Eligibility and application for service retirement allowance — commencement of allowance. (1) *(a)* A member *first employed by the Montana highway patrol on or before July 1, 1985, is eligible to receive a service retirement allowance after completing* 20 years *or more* of creditable service.

(b) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement allowance when he has reached age 50 and has completed 20 years or more of creditable service.

(2) A member eligible to receive a retirement allowance as provided in subsection (1) must apply in writing to the department setting forth at what time he desires to be retired, *which may* not *be* less than 30 days or more than 90 days subsequent to the filing thereof.

(3) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

Section 6. Section 19-6-502, MCA, is amended to read:

"19-6-502. Service retirement allowance. (1) Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity.

(2) The *amount of the* service retirement allowance shall *equal* 2% of his final salary for each year of *creditable* service."

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Section 7. **Payment of retirement allowance.** (1) The department shall pay the service retirement allowance provided for in 19-6-502 to the retired patrolman for the remainder of his life.

(2) Upon the retired patrolman's death, the department shall pay the retirement allowance to the patrolman's surviving spouse, if there is one, for as long as the spouse remains unmarried.

(3) (a) If upon the retired patrolman's death there is no surviving spouse or if the spouse remarries or dies, the department shall pay the retirement allowance as provided in subsection (3)(c) to the retired patrolman's child, if there is one, for as long as the child remains dependent as defined in 19-6-101.

(b) If there is more than one dependent child, the retirement allowance must be paid as provided in subsection (3)(c) to the children collectively. When a child no longer qualifies as dependent as defined in 19-6-101, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If upon the retired patrolman's death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-6-602, the department shall pay to the designated beneficiary an amount equal to the retired patrolman's accumulated deductions less any retirement benefits paid to the member before his death.

(5) If the retired patrolman did not designate a beneficiary or if the beneficiary predeceased the retired patrolman, the amount provided in subsection (4) must be paid to the patrolman's estate.

Section 8. Section 19-6-503, MCA, is amended to read:

"19-6-503. Retirement allowance for member discontinued from service other than for cause. If a member is discontinued from service *other than for cause* after having completed *5* years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60."

Section 9. Section 19-6-601, MCA, is amended to read:

"19-6-601. Disability retirement allowance. *(1)* In case of the total disability of a member, permanent in character, regardless of the length of service of the member, a disability retirement allowance shall be granted the member in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result

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of any service to the Montana highway patrol in line of duty, then such patrolman who is totally and permanently disabled shall be retired on total retirement allowance of one-half his average final salary regardless of his length of service.

(2) Upon the death of a retired patrolman receiving a disability retirement allowance as provided in subsection (1), the allowance must be paid to his surviving spouse or dependent child, if there is a spouse or child, in the same manner as provided for in [subsections (2) and (3) of section 7]."

Section 10. Section 19-6-602, MCA, is amended to read:

"**19-6-602. Nomination of beneficiary.** *(1)* Every member may name *a* beneficiary *who is eligible to receive a retirement allowance if there is no surviving spouse or dependent child. Nomination is* by written designation, duly acknowledged and filed with the department, and may *be changed* in like manner.

(2) Nothing in this section affects the right of a surviving spouse or dependent child to receive a retirement allowance."

Section 11. Section 19-6-603, MCA, is amended to read:

"**19-6-603. Payments upon employment-related death.** (1) If the board shall find that a member died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his *surviving spouse, dependent child, or designated* beneficiary *in the same manner as provided for in [subsections (2) through (4) of section 7].*

(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to *a surviving spouse, dependent child, or designated* beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable."

Section 12. Section 19-6-604, MCA, is amended to read:

"**19-6-604. Payments upon death from other causes.** If a member dies before reaching retirement age, *the department shall pay to* his *surviving spouse, dependent child, or designated* beneficiary *in the same manner as provided for in [subsections (2) through (4) of section 7]* the actuarial equivalent of the options as provided in 19-6-503."

Section 13. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 14. **Repealer.** Section 19-6-701, MCA, is repealed.

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Section 15. **Codification instruction.** Section 7 is intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to section 7.

Section 16. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 279

[HB 384]

AN ACT PROVIDING THAT AN ELECTION ON THE QUESTION OF WHETHER TO ANNEX IS NOT NECESSARY IF ALL THE PROPERTY OWNERS IN THE TERRITORY TO BE ANNEXED HAVE SIGNED THE ANNEXATION PETITION; AMENDING SECTIONS 7-2-4601 AND 7-2-4606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4601, MCA, is amended to read:

"7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken as provided in this part.

(2) The council or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to the corporation and signed by not less than 33 ⅓% of the registered electors of the territory proposed to be annexed, must without delay submit to the electors of the municipal corporation and to the registered electors residing in the territory or territories proposed by the petition to be annexed to the corporation, the question whether the new territory or territories shall be annexed to, incorporated in, and made a part of the municipal corporation.

(3) *(a)* The governing body of a municipality *need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received* a written petition containing a description of territory requested to be annexed and signed by:

(i) more than 50% of the resident freeholder electors of the territory to be annexed; *or*

(ii) the owner or all the owners of each parcel of property in the territory to be annexed.

(b) The governing body may approve or disapprove a petition *submitted under the provisions of subsection (3)(a)* upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation."

Section 2. Section 7-2-4606, MCA, is amended to read:

"7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for such annexation.

(b) Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of 33 ⅓% of the resident freeholder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident freeholder electors *or the owners of all* of the territory to be annexed; a description of the boundaries of the territory to be annexed; and a statement that the boundaries of the municipality are to be extended to include the territory described in the petition for annexation. The resolution shall be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607."

Approved April 1, 1985.

CHAPTER NO. 280

[HB 580]

AN ACT TO AUTHORIZE A COUNTY TO FUND SEARCH AND RESCUE UNITS ESTABLISHED OR RECOGNIZED BY THE COUNTY AFTER APPROVAL BY A VOTE OF THE PEOPLE OF THE COUNTY; AMENDING SECTION 7-32-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-235, MCA, is amended to read:

"7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding. *(1) A county may establish or recognize one or more search and rescue units within the county.*

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff having jurisdiction.

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(3) A county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax of not more than 1 mill on each dollar of taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1)."

Approved April 1, 1985.

CHAPTER NO. 281

[HB 599]

AN ACT REMOVING THE REQUIREMENT THAT 8 HOURS CONSTITUTE A DAY'S WORK FOR HYDROELECTRIC DAM EMPLOYEES; AMENDING SECTION 39-4-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-4-109, MCA, is amended to read:

"**39-4-109. Cement plants and quarries.** (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 2. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 282

[HB 606]

AN ACT REVISING AND CLARIFYING THE LAWS PERTAINING TO THE SALE AND DISTRIBUTION OF MOTOR VEHICLES; ESTABLISHING ADMINISTRATIVE PENALTIES; AMENDING SECTIONS 61-4-101 AND 61-4-103 THROUGH 61-4-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Application for dealer's license.** (1) Every person, firm, corporation, or association which, for commission or profit, engages in the

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business of buying, selling, exchanging, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the division a verified application for licensure as a dealer, on a blank to be furnished by the division for that purpose and containing the information required. The application and all of the information contained in it shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter specified. A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the division prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a recreational vehicle, trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

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(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business *and that vehicles are offered for sale*; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, or motorcycles. An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually."

Section 2. Section 61-4-103, MCA, is amended to read:

"61-4-103. Assignment of dealer plates. (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, recreational vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the division shall assign to such dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with such sets of number plates as required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); the letters "RV" if the dealer is authorized to sell recreational vehicles; the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the "D" plate or demonstrator plate, no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer may

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be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate or demonstrator plate is authorized to sell both new and used motor vehicles (including trucks and truck trailers), and such plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The division shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.

(4) Dealers properly licensed under this section are authorized to use and display dealer's license plates on any motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, "officers and employees" include only such persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and their spouses or such other persons upon whom the dealer has paid social security taxes as a full-time employee. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. Each dealer is accountable for each plate issued and shall certify quarterly to the division the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) *When the division has reasonable cause to believe, from an investigation made by it or* information furnished to it by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one herein authorized, or is not qualified as a dealer under the requirements of this section, the division may revoke such dealer's license. No person, firm, corporation, or association shall, for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds)."

Section 3. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. Every dealer licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles shall also include the engine number, if any, maker's number, if any, chassis number, if any, and such other numbers or identification marks as appear thereon and shall

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include a statement that a number has been obliterated, defaced, or changed if such is the fact. In the case of a trailer, semitrailer, or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as appear thereon. The dealer shall also have in his possession a duly assigned certificate of ownership from the owner of the motor vehicle from the time the motor vehicle is delivered to him until it has been disposed of by him. *An authorized representative of the division, upon presentation of his credentials, may inspect and have access to and copy any records required under this chapter.*"

Section 4. Section 61-4-105, MCA, is amended to read:

"**61-4-105. Criminal penalty — civil penalty imposed by agency.** *(1)* Any person violating the provisions of 61-4-101 through 61-4-104 shall be guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes hereof, every sale of a motor vehicle in violation of the provisions of 61-4-101 through 61-4-104 shall be deemed a separate offense.

(2) In addition to all other penalties created by this part, the division is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of 61-4-101 through 61-4-104 may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Approved April 1, 1985.

CHAPTER NO. 283

[HB 609]

AN ACT TO REVISE THE POWER OF ATTORNEY PROVISIONS OF THE PROBATE CODE TO PROVIDE FOR DURABLE POWERS OF ATTORNEY; AMENDING SECTIONS 72-5-501 AND 72-5-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-501, MCA, is amended to read:

"**72-5-501. When power of attorney not affected by disability.** (1) *A durable power of attorney is a power of attorney by which* a principal designates another his attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be affected by *subsequent* disability *or incapacity* of the principal *or lapse of time*" or "This power of attorney shall become effective upon the disability *or incapacity*

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of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding *the principal's subsequent* disability or incapacity, *and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.* All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or *incapacity* or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal *and* his *successors in interest* as if the principal were alive, competent, and not disabled.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, *is accountable* to the conservator *as well as* the principal. The conservator has the same power *to revoke or amend the power of attorney that* the principal would have had if he were not disabled or *incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.*"

Section 2. Section 72-5-502, MCA, is amended to read:

"**72-5-502. Power of attorney not revoked until notice.** (1) The death of *a* principal who has executed a *written* power of attorney, *durable or otherwise,* does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the *successors in interest of the* principal.

(2) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

(3) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact or agent stating that he did not have, at the time of *exercise of the power,* actual knowledge of the termination of the power by *revocation or of the principal's* death, disability, or *incapacity* is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(4) This section *does* not affect any provision *in a power of attorney* for *its* termination *by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.*"

Approved April 1, 1985.

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CHAPTER NO. 284

[HB 637]

AN ACT REVISING THE PROCEDURE FOR ENFORCEMENT OF THE ANNUAL FEE AND REPORTING REQUIREMENTS UNDER THE HARD-ROCK MINING LAW; ELIMINATING THE CIVIL PENALTY AND AUTHORIZING SUSPENSION OF THE PERMIT; AMENDING SECTIONS 82-4-361 AND 82-4-362, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part, *except 82-4-339,* shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part."

Section 2. Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits. (1) If any of the requirements of this part or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this part, the rules, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply

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within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 3. **Extension of authority.** Any existing authority of the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 285

[HB 662]

AN ACT DEFINING THE SCOPE OF THE SECURITIES ACT OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

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(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 30, chapter 10, parts 1 through 3, and the provisions of Title 30, chapter 10, parts 1 through 3, apply to section 1.

Section 3. **Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1985.

CHAPTER NO. 286

[HB 702]

AN ACT TRANSFERRING VARIOUS FORESTRY FUNCTIONS FROM THE DEPARTMENT AND BOARD OF NATURAL RESOURCES AND CONSERVATION TO THE DEPARTMENT OF STATE LANDS; AMENDING SECTIONS 77-1-304, 77-2-213, 77-2-214, AND 77-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-304, MCA, is amended to read:

"77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation."

Section 2. Section 77-2-213, MCA, is amended to read:

"77-2-213. Department to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective

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tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department and *the* department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest."

Section 3. Section 77-2-214, MCA, is amended to read:

"77-2-214. Investigation and findings concerning exchange of land. (1) The department shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged."

Section 4. Section 77-5-104, MCA, is amended to read:

"77-5-104. Firewardens. (1) The department shall appoint firewardens in such number and localities as it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties hereby imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens;

(e) the state fish, wildlife, and parks director;

(f) the *commissioner* and employees of the department designated by him;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana; and

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(j) officers of the bureau of Indian affairs.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Approved April 1, 1985.

CHAPTER NO. 287

[HB 705]

AN ACT DIRECTING THE BOARD OF LAND COMMISSIONERS TO HOLD A PUBLIC HEARING ON ANY EXCHANGE OF STATE TRUST LANDS; PROVIDING FOR NOTICE OF A PROPOSED EXCHANGE TO THE LEASEHOLDERS; PROVIDING FOR APPROVAL OF AN EXCHANGE; PROVIDING FOR SETTLEMENT FOR IMPROVEMENTS; PROVIDING THAT, IN AN EXCHANGE INVOLVING PRIVATE LAND, THE PROPERTY APPRAISAL BE MADE AVAILABLE TO THE PUBLIC; AMENDING SECTIONS 77-2-203 AND 77-2-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-203, MCA, is amended to read:

"77-2-203. Exchange for private land. (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. *The contents of the appraisal must be made available to any person who makes a written request to the board.* The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water."

Section 2. Section 77-2-204, MCA, is amended to read:

"77-2-204. Notification of proposed exchange — hearing. *(1) Upon receipt of a proposal for an exchange of land under this part, the board shall give notice of the proposed exchange by certified mail to each person who has leased, under chapter 1 of this title, any portion of land involved in the proposed exchange. Any such leaseholder may present written or oral comments on the proposed exchange to the board before or during the hearing required by subsection (2). The notice must contain a statement informing the recipient of this right to comment.*

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(2) A public hearing *on any exchange under this part* shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised *before or* during any such hearing *pursuant to subsection (1)*, the board shall make findings of fact responding to such objections and explaining their action."

Section 3. **Approval or disapproval of exchanges.** All exchanges of state lands are subject to approval and confirmation by the board, and no exchange is considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state.

Section 4. **Settlement for improvements.** If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

Section 5. **Codification instruction.** Sections 3 and 4 are intended to be codified as an integral part of Title 77, chapter 2, part 2, and the provisions of Title 77, chapter 2, part 2, apply to sections 3 and 4.

Section 6. **Extension of authority.** Any existing authority of the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 288

[HB 769]

AN ACT TO GENERALLY REVISE BOND RELEASE PROCEDURES UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; AMENDING SECTION 82-4-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the

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graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in (b) above with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

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(6) *(a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of his intention to seek release from the bond.*

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days thereafter.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(3)(k); or

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(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or portion thereof, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for such hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for such hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve such written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse

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vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

Section 2. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 289

[HB 784]

AN ACT TO GENERALLY REVISE STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING TIME FRAMES; AMENDING SECTION 82-4-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules

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adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, he shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation *within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference.* The department may arrange with the applicant upon request by any party

to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than

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45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing by the board. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the board may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling,

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and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

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(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 2. **Extension of authority.** Any existing authority of the board of land commissioners or the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

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CHAPTER NO. 290

[HB 786]

AN ACT TO GENERALLY REVISE LAWS RELATING TO BID DEPOSITS FOR STATE SURFACE LEASES; ALLOWING FORFEITURE OF DEPOSITS FOR FRIVOLOUS, FORGED, BAD FAITH, OR HARASSMENT BIDS; AND AMENDING SECTION 77-6-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-203, MCA, is amended to read:

"77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful *bona fide* bidders. *If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor.*

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust."

Section 2. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

CHAPTER NO. 291

[SB 134]

AN ACT TO PERMIT NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER ON BUILDING CONSTRUCTION PROJECTS WHEN ALL BIDS CAUSE THE PROJECT COSTS TO EXCEED THE APPROPRIATED FUNDS; AMENDING SECTION 18-2-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-105, MCA, is amended to read:

"18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

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(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for such buildings;

(4) issue and sell bonds and other securities;

(5) maintain an inventory of all buildings;

(6) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against moneys available for construction.

(7) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate his bid but is required to honor his bid for the time specified in the bidding documents. The department may terminate negotiations at any time. Any contract award resulting from negotiation is subject to the approval of the board of examiners."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1985.

CHAPTER NO. 292

[SB 261]

AN ACT TO ELIMINATE THE USE AND OWNERSHIP RESTRICTION FOR GOLF COURSES TO BE TAXED AT ONE-HALF THE RATE OF OTHER CLASS FOUR PROPERTY; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"**15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

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(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(c) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,000	0%
1,001 - 2,000	1,001 - 2,000	10%
2,001 - 2,800	2,001 - 3,000	20%
2,801 - 3,600	3,001 - 4,000	30%
3,601 - 4,400	4,001 - 5,000	40%
4,401 - 5,200	5,001 - 6,000	50%
5,201 - 6,000	6,001 - 7,000	60%
6,001 - 6,800	7,001 - 8,000	70%
6,801 - 7,600	8,001 - 9,000	80%
7,601 - 8,000	9,001 - 10,000	90%

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a)."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

Approved April 1, 1985.

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CHAPTER NO. 293

[SB 272]

AN ACT CLARIFYING THE ELIGIBILITY AND LICENSE COMPLIANCE PROVISIONS RELATED TO THE DEVELOPMENT OF HYDROELECTRIC POWER GENERATION AT STATE-OWNED WATER PROJECTS; PROVIDING FOR A POWER GENERATION NEGOTIATION PROCESS; AMENDING SECTIONS 85-1-503 AND 85-1-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-503, MCA, is amended to read:

"85-1-503. Receipt of applications. (1) Applications for lease may be submitted by any *person qualified to do business in Montana.*

(2) The board shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the board requests."

Section 2. Section 85-1-506, MCA, is amended to read:

"85-1-506. Compliance with federal law. *The department may* hold a license, permit, or exemption under federal law *on a project.*"

Section 3. **Power generation negotiation process.** (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a state-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this

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section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

(6) Department actions under this section are subject to prior approval of the board as provided in 85-1-202.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 85, chapter 1, part 5, and the provisions of Title 85, chapter 1, part 5, apply to section 3.

Section 5. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1985.

CHAPTER NO. 294

[HB 292]

AN ACT PROVIDING A MINIMUM MONTHLY BENEFIT ALLOWANCE FOR CERTAIN RETIRED HIGHWAY PATROLMEN AND THEIR BENEFICIARIES; PROVIDING FUNDING FOR THE MINIMUM MONTHLY BENEFIT ALLOWANCE THROUGH INCREASED EMPLOYEE AND EMPLOYER CONTRIBUTIONS; AMENDING SECTIONS 19-6-402 AND 19-6-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Minimum monthly benefit allowance.** (1) Subject to the limitations contained in subsection (2), the following retired highway patrolmen and their beneficiaries are eligible to receive a monthly benefit allowance of not less than 2% multiplied by the patrolman's creditable years of service multiplied by the current base salary received by a probationary highway patrolman:

(a) a retired patrolman who is 55 years of age or older, except as provided in subsection (3), or his beneficiary, who is receiving a service retirement allowance;

(b) a retired patrolman, or his beneficiary, who is receiving a disability retirement allowance; and

(c) a beneficiary receiving a survivorship allowance.

(2) (a) The maximum monthly benefit allowance paid under subsection (1) may not exceed 60% of the current base salary of a probationary highway patrolman.

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(b) The annual increase in a monthly benefit allowance under subsection (1) may not exceed 5% of the current monthly benefit allowance paid to a retired highway patrolman or his beneficiary.

(3) A retired patrolman otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19, chapters 3 through 13, is ineligible to receive the minimum monthly benefit allowance provided for in this section until his employment in the covered position is terminated.

Section 2. Section 19-6-402, MCA, is amended to read:

"19-6-402. Member's contribution. Every member shall be required to contribute into the account a sum equal to *7 ½%* of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account."

Section 3. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the account an amount equal to *24.74%* of the salaries paid to the highway patrolmen who are covered by this account from the general fund."

Section 4. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Coordination section.** If both this act and House Bill No. 291 are passed and approved, the percentage amount contained in 19-6-402 must reflect the sum of the increases in the member's contribution provided in House Bill No. 291 and this act, and the percentage amount contained in 19-6-404 must reflect the sum of the increases in the state's contribution provided in House Bill No. 291 and this act.

Section 6. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 6, part 7, and the provisions of Title 19, chapter 6, apply to section 1.

Section 7. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 295

[HB 809]

AN ACT LIMITING THE REQUIREMENT THAT EXPENSES FOR APPOINTED COUNSEL IN A CRIMINAL PROCEEDING BE BORNE BY A STATE AGENCY TO SITUATIONS IN WHICH THE STATE AGENCY PROSECUTES THE CHARGE; AMENDING SECTIONS 46-8-114 AND 46-8-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court

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may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county, *agency, state agency,* or *local government unit* responsible for the expenses of court-appointed counsel as provided for in 46-8-201."

Section 2. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice *and the charge is prosecuted by personnel of the state agency that made the charge,* the expense must be borne by the *prosecuting* state agency."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 296

[SB 251]

AN ACT EXEMPTING FROM CERTAIN FINANCING REQUIREMENTS PROJECTS THAT ARE NOT TO BE GUARANTEED OR SECURED BY THE MONTANA ECONOMIC DEVELOPMENT BOARD; CHANGING HEARING NOTIFICATION REQUIREMENTS; AMENDING SECTIONS 17-5-1526 AND 17-5-1527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects. (1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

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(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519; and

(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 2. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

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(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519; and

(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 3. **Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1985.

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CHAPTER NO. 297

[SB 363]

AN ACT EXPANDING THE REPURCHASE OF INVENTORY REQUIREMENTS OF CANCELED DEALERSHIP CONTRACTS TO INCLUDE CANCELED DISTRIBUTION CONTRACTS; DEFINING "DISTRIBUTION CONTRACT", "DEALERSHIP CONTRACT", AND "WHOLESALER"; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-704, AND 30-11-711 THROUGH 30-11-713, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; *and*

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; *and*

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(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 2. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the dealer at the time of cancellation.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's *or wholesaler's* account of the sum required in *subsections* (1) *or (2)* must be made upon return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment."

Section 3. Section 30-11-704, MCA, is amended to read:

"30-11-704. Repurchase of inventory of deceased retailer or wholesaler. If the retailer, *wholesaler,* or majority stockholder in a corporation operating as a retailer *or wholesaler* entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702."

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Section 4. Section 30-11-711, MCA, is amended to read:

"30-11-711. Rights not affected. (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's *or wholesaler's* account any amount previously credited or paid as a discount incident to the retailer's *or wholesaler's* purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer *or wholesaler.*"

Section 5. Section 30-11-712, MCA, is amended to read:

"30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer *or wholesaler*, the retailer's *or wholesaler's* attorney fees, and court costs."

Section 6. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. *(1)* The provisions of this part are supplemental to any agreement between*:*

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory*; or*

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer *or wholesaler* may elect to pursue either his contract remedies or the remedy provided in 30-11-702. An election to pursue his contract remedies does not bar the retailer's *or wholesaler's* right to the remedy provided in 30-11-702 as to any inventory not covered by contract."

Section 7. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 1, 1985.

CHAPTER NO. 298

[SB 384]

AN ACT PERMITTING A DISTRICT JUDGE OR SUPREME COURT JUSTICE WHO WAS A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BEFORE DECEMBER 31, 1984, TO REMAIN A MEMBER OF THAT RETIREMENT SYSTEM RATHER THAN JOIN THE JUDGES' RETIREMENT SYSTEM; AMENDING SECTION 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-301, MCA, is amended to read:

"19-5-301. Membership. (1) A judge or justice who was a member of the PERS prior to *December 31, 1984*, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, *1985.*

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(2) Every other judge of a district court or justice of the supreme court must be a member of the Montana judges' retirement system."

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved April 1, 1985.

CHAPTER NO. 299

[HB 549]

AN ACT TO GENERALLY CLARIFY CERTAIN LAWS RELATING TO SCHOOL DISTRICT FINANCE AND BUDGET PROCEDURES; AMENDING SECTIONS 20-3-106, 20-3-331, 20-9-333, 20-9-335, 20-9-348, 20-9-351, AND 20-9-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

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(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(19) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

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(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(28) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(29) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(30) administer the traffic education program in accordance with the provisions of 20-7-502;

(31) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(32) review school building plans and specifications in accordance with the provisions of 20-6-622;

(33) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(34) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 20-3-331, MCA, is amended to read:

"20-3-331. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property."

Section 3. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

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(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's *accounts* for *the various sources of revenue* established in this section; and

(b) any federal or state moneys, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 4. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization moneys. (1) After making such deductions prescribed in 20-9-334, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(a) determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts;

(b) multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1)(a) above to determine the portion of the county equalization moneys available to each public elementary district.

(2) The above procedure shall also be applied for public secondary districts.

(3) No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The

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county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes."

Section 5. Section 20-9-348, MCA, is amended to read:

"20-9-348. Estimation of state equalization aid for budget purposes. The apportionment of state equalization aid shall be the *second* source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the *county superintendent shall consider that the* state foundation program revenues and county equalization moneys, together, will be capable of financing *100% of the foundation program.*"

Section 6. Section 20-9-351, MCA, is amended to read:

"20-9-351. Funding of deficiency in state equalization aid. If the *foundation program* level made under the provisions of 20-9-348 is less than 100% or if the permissive funding level made under the provisions of 20-9-352 is less than 100%, it shall be the duty of the superintendent of public instruction to request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that would be sufficient to complete the funding of the foundation programs prescribed under 20-9-348 and of the permissive programs prescribed under 20-9-352 of the elementary or secondary schools, or both, for the current biennium."

Section 7. Section 20-9-805, MCA, is amended to read:

"20-9-805. Rate of reduction in annual apportionment entitlement. (1) For each school day short of the minimum number of school days required by law that a school district fails to conduct by reason of one or more unforeseen emergencies *as defined in 20-9-802*, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by 1/180th.

(2) Kindergarten and grade 1 through 12 programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of apportionment."

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1985.

CHAPTER NO. 300

[HB 587]

AN ACT PROVIDING FOR THE TRANSFER OR EXCHANGE OF CONVICTED OFFENDERS UNDER THE PROVISIONS OF TREATY AGREEMENTS WITH FOREIGN COUNTRIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exchange of offenders under treaty.** If a treaty in effect between the United States and a foreign country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which

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they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the director of the department of institutions to consent to the transfer or exchange of offenders in Montana institutions and take any other action necessary to initiate the participation of this state in the treaty.

Section 2. **Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to section 1.

Approved April 1, 1985.

CHAPTER NO. 301

[HB 658]

AN ACT TO ESTABLISH A JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds that an emergency situation exists because of the high cost and impending unavailability of medical liability insurance. The purpose of [this act] is to provide an interim solution to the unavailability of such insurance, if such insurance becomes unavailable prior to the next session of the legislature. Accordingly, [this act] is enacted for a limited period of time.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Association" means the joint underwriting association established pursuant to the provisions of [this act].

(2) "Medical liability insurance" means insurance coverage against legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence in rendering professional service by a licensed physician or a hospital, health care facility, or long-term care facility, as defined by 50-5-101.

(3) "Net direct premiums" means gross direct premiums on personal injury liability insurance written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple peril package policies as computed by the commissioner of insurance, less return premiums or the unused or unabsorbed portions of premium deposits.

Section 3. **Joint underwriting association.** (1) A joint underwriting association is created, consisting of all insurers authorized to write and

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engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of [Title 33], including insurers covering the perils in multiple peril package policies. Each of these insurers shall remain a member of the association as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

(3) The association may not commence underwriting operations for hospitals, health care facilities, or long-term care facilities until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, health care facilities, or long-term care facilities, but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.

(4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, health care facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the voluntary market.

(5) The association has, pursuant to the provisions of [this act] and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:

(a) subject to limits as specified in the plan of operation but not to exceed $1,000,000 for each claimant under one policy and $3,000,000 for all claimants under one policy in any one year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;

(b) underwrite the insurance and assume reinsurance from its members; and

(c) cede reinsurance.

(6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of [this act] to be fully effective and operative upon order of the commissioner of insurance.

(b) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of

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medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(c) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.

(d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or must be made if directed by the commissioner.

Section 4. **Procedures.** (1) (a) On or after the effective date of the plan of operation, a licensed physician or hospital, health care facility, or long-term care facility is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of 1 year.

(2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner of insurance may require.

(b) Within such time as the commissioner of insurance directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association. If the commissioner disapproves the initial filing, in whole or in part, the association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to approve the filing or amended filing within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

(c) Any deficit sustained by the association in any one year must be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

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(i) an assessment upon the policyholders; or

(ii) a rate increase applicable prospectively.

(d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase must be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant premium rates must be on an actuarially sound basis and must be calculated to be self-supporting.

(e) If sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d), all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in this section. Contributions must be reimbursed to the members following recoupment as provided in subsection (2)(d).

(f) The commissioner of insurance shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies must be at rates established on an actuarially sound basis and which are calculated to be self-supporting.

Section 5. **Participation.** All insurers that are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association must be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner of insurance. No member is obligated in any one year to reimburse the association on account of the member's proportionate share in the deficit from operations of the association in that year in excess of 1% of the member's surplus to policyholders, and the aggregate amount not so reimbursed must be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section, after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. If the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit must be allocated to each member in accordance with the method of determining participation prescribed in this section.

Section 6. **Directors.** The association must be governed by a board of directors, to be elected annually. Eight directors must be elected by cumulative voting of members of the association, whose votes must be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors must be appointed by the commissioner of insurance as representatives of the medical profession, the

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appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association must be elected at a meeting of the members held at a time and place designated by the commissioner.

Section 7. **Appeals and judicial review.** (1) With respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to [this act], his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling, action, or decision by or on behalf of the association.

(2) All orders of the commissioner of insurance made pursuant to [this act] are subject to judicial review as provided in [Title 33].

Section 8. **Privileged communications.** There is no liability on the part of and no cause of action of any nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representative for any statement made in good faith by them in any report or communication concerning risks insured or to be insured by the association or at any administrative hearing conducted in connection therewith.

Section 9. **Annual statements.** The association shall file in the office of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement must contain the matters and information prescribed and must be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information with respect to its transactions, conditions, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 10. **Examination of association's affairs.** The commissioner of insurance shall make an examination into the affairs of the association at least annually. The examination must be conducted and the report thereon filed in the manner provided by law. The expenses of every examination must be borne and paid by the association in the manner prescribed by law.

Section 11. **Termination date — enforceability of issued policies.** This act terminates October 1, 1987, after which no new policies may be issued by the association. However, all issued policies continue in force until their expiration dates.

Section 12. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1985.

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CHAPTER NO. 302

[SB 103]

AN ACT REVISING THE LAWS RELATING TO DISABILITY INSURANCE BY INCLUDING LICENSED SOCIAL WORKERS IN THE PROVISIONS REGARDING FREEDOM OF CHOICE OF PRACTITIONERS AND COVERAGE FOR MENTAL ILLNESS, ALCOHOLISM, AND DRUG ADDICTION; AMENDING SECTIONS 33-22-111 AND 33-22-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, *licensed social worker,* or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital or freestanding inpatient facility, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(c) reasonable charges made by a mental health, alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center; and

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(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, *or social worker.*

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed or approved as an alcoholism or drug addiction treatment center by the alcohol authority of the state.

(4) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder."

Section 3. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 303

[SB 159]

AN ACT TO INCREASE THE AMOUNT THAT A RETIREE MAY EARN IN COVERED EMPLOYMENT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BEFORE RECEIVING A REDUCTION IN HIS RETIREMENT ALLOWANCE; CHANGING THE RATE AT WHICH A RETIREE'S ALLOWANCE WILL BE REDUCED AFTER HIS EARNINGS EXCEED THIS AMOUNT; CLARIFYING EXCLUSIONS TO MEMBERSHIP UNDER THE RETIREMENT SYSTEM; AMENDING SECTIONS 19-3-403 AND 19-3-1106, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions. The following persons may not become members of the retirement system:

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(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the

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internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members;

(13) full-time students employed at and attending the same public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later;

(15) all former members receiving a retirement allowance, other than as a beneficiary, serving in employment if that employment does not exceed 60 working days in any *calendar* year. These former members must be reinstated into membership on the 61st working day in any *calendar* year unless they elect to return to membership prior to that day."

Section 2. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Reduction of retirement allowance upon limited reemployment. Any person receiving a service retirement allowance, not as a beneficiary, who is not eligible for membership may return to covered employment for a period not to exceed 60 working days in any *calendar*

year. The retirement allowance of a retiree so employed will be reduced by $1 for each *$3* earned in excess of *$5,000* for each calendar year."

Section 3. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to covered employment performed after December 31, 1984.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 304

[SB 197]

AN ACT TO AMEND THE LAWS RELATING TO FISHING, HUNTING, TRAPPING, AND CAMPING LICENSES AS THEY RELATE TO VARIOUS CLASSES OF LICENSEES; AMENDING SECTIONS 23-1-105, 87-2-111, 87-2-403, 87-2-506, AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges — golden years pass — disabled person waiver. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided and to grant such concessions as it may deem advisable, except as provided in subsections (2) and (3). All moneys derived from the activities of the department shall be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Any Montana resident as defined in 87-2-102 who is *62* years of age or older may purchase a "Montana state golden years pass" for $1 which, when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual.

(3) The fees established by the department under subsection (1) are waived for a person *who is a resident of Montana not residing in an institution and who is certified as disabled in accordance with rules adopted by the department.*"

Section 2. Section 87-2-111, MCA, is amended to read:

"87-2-111. Termination of license. Such licenses shall be void after the last day of February next succeeding their issuance, *except that trapping licenses as described in part 6 of this chapter shall be void after June 30 next succeeding their issuance.*"

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Section 3. Section 87-2-403, MCA, is amended to read:

"87-2-403. Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license *or as set out in subsection (3).* Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag shall be $3. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of his wildlife conservation license."

Section 4. Section 87-2-506, MCA, is amended to read:

"87-2-506. Restrictions on hunting licenses. (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for *big game* licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of *big game* licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued."

Section 5. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under fifteen years of age. (1) *Resident minors* from 12 years through 14 years of age may fish and may hunt upland and migratory birds during the open season with only a conservation license. Resident minors under 12 years of age may fish without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age."

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Section 6. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 305

[SB 209]

AN ACT CREATING A FISH AND WILDLIFE CRIMESTOPPERS PROGRAM WITHIN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Fish and Wildlife Crimestoppers Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Board" means the fish and wildlife crimestoppers board created in [section 7].

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Program" means the fish and wildlife crimestoppers program created under [section 5].

Section 3. **Functions of the board.** The board shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating fish and wildlife-related crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program.

Section 4. **Compensation.** Members of the board are entitled to no salary but are entitled to expenses incurred while on official business, as provided in 2-18-501 through 2-18-503.

Section 5. **Powers and duties of department — rules.** (1) The department shall:

(a) create, maintain, and promote a statewide fish and wildlife crimestoppers program in order to assist law enforcement agencies in detecting and combating fish and wildlife-related crimes; and

(b) consider the board's recommendations and take action on them.

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(2) The department may:

(a) advise and assist in the creation and maintenance of local programs;

(b) encourage the channeling of information from state and local programs to law enforcement agencies;

(c) foster the detection of fish and wildlife-related crimes by the public;

(d) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of fish and wildlife-related crimes;

(e) promote state and local programs through the media;

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(g) adopt rules necessary to administer the provisions of [this act].

Section 6. **Confidentiality.** The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

Section 7. **Fish and wildlife crimestoppers board.** (1) There is a fish and wildlife crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) the person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a sportsmen's or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public, appointed at large.

(b) The fifth member is a member of the fish and game commission who shall be designated by the commission.

(3) The board shall elect a chairman from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121.

Section 8. **Effective date.** This act is effective July 1, 1985.

Approved April 2, 1985.

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CHAPTER NO. 306

[SB 212]

AN ACT ALLOWING THE GOVERNOR TO ENTER INTO AGREEMENTS WITH STATES AND RELEVANT FEDERAL AGENCIES TO MAINTAIN OR AUGMENT SERVICE OF AMTRAK; PROVIDING AUTHORITY TO ENTER INTO SUCH AGREEMENTS AS PROVIDED IN 45 U.S.C. 563(B); AMENDING SECTION 60-11-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-11-201, MCA, is amended to read:

"60-11-201. Agreements for rail passenger service application. The governor or his authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act (45 U.S.C. 563(b)) *or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state.* The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature. *However, the governor or his authorized representative may enter into agreements to expand Amtrak rail passenger service under 45 U.S.C. 563(b), as that statute reads on July 1, 1985, subject to appropriation by the legislature."*

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 2, 1985.

CHAPTER NO. 307

[SB 282]

AN ACT AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH EXPIRATION DATES FOR THE LICENSES OF SOCIAL WORKERS, SPEECH PATHOLOGISTS, AND AUDIOLOGISTS; AMENDING SECTION 37-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications

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for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, land surveyors, nursing home administrators, optometrists, plumbers, *social workers, speech pathologists, audiologists,* and radiologic technologists."

Approved April 2, 1985.

CHAPTER NO. 308

[SB 306]

AN ACT REQUIRING AUDITS OF THE LOANS AND INVESTMENTS OF THE MONTANA ECONOMIC DEVELOPMENT BOARD BY THE BANK EXAMINERS OF THE DEPARTMENT OF COMMERCE AND THE LEGISLATIVE AUDITOR; AND AMENDING SECTIONS 17-5-1529, 17-5-1649, AND 17-6-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1529, MCA, is amended to read:

"17-5-1529. Annual audits. *(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.*

(2) The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds."

Section 2. Section 17-5-1649, MCA, is amended to read:

"17-5-1649. Annual audits. *(1) At least once each year, the bank examiners of the department shall examine loans and investments of the*

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board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds."

Section 3. Section 17-6-321, MCA, is amended to read:

"17-6-321. Audits. (1) *At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.*

(2) *The board's books and records must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds.*"

Section 4. **Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 309

[SB 310]

AN ACT TO INCLUDE COMMUNITY HOMES FOR DEVELOPMENTALLY, MENTALLY, OR PHYSICALLY DISABLED PERSONS WHO REQUIRE NURSING CARE IN THE DEFINITION OF A COMMUNITY RESIDENTIAL FACILITY; AMENDING SECTION 76-2-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a *community* group home for developmentally, *mentally, or physically* disabled persons *which does not provide skilled or intermediate* nursing care;

(2) a youth *foster home or youth* group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Approved April 2, 1985.

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CHAPTER NO. 310

[SB 345]

AN ACT CREATING THE "ANHYDROUS AMMONIA FACILITIES SAFETY ACT"; REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES REGULATING ANHYDROUS AMMONIA FACILITIES; ALLOWING AN INCREASE IN ANHYDROUS AMMONIA INSPECTION FEES FOR ADMINISTRATION AND ENFORCEMENT; AND AMENDING SECTIONS 80-10-207 AND 80-10-303, MCA.

WHEREAS, commercial fertilizer, primarily anhydrous ammonia, is a necessary enhancement to agricultural production in Montana; and

WHEREAS, there is continuing and growing demand for anhydrous ammonia in Montana and new anhydrous ammonia facilities will be constructed and operated in this state; and

WHEREAS, there is no central, statewide coordination of a safety program and location standards for commercial anhydrous ammonia facilities; and

WHEREAS, the State of Montana does not have an existing safety code for anhydrous ammonia storage, manufacturing, and distribution facilities; and

WHEREAS, the public interest in health and safety requires that such facilities be properly located and operated, according to acceptable and defined industry standards.

THEREFORE, the Legislature finds it necessary and appropriate to enact legislation providing that the Montana Department of Agriculture act as the coordinator of a comprehensive safety program for commercial anhydrous ammonia facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7] shall be known and may be cited as the "Anhydrous Ammonia Facilities Safety Act".

Section 2. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Anhydrous ammonia" means a compound formed by a combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume, which compound is in either gaseous or liquid form and is used primarily as fertilizer.

(2) "Anhydrous ammonia facility" or "facility" means any building, tank, or system of equipment used for processing, storing, or distributing anhydrous ammonia and includes all appurtenances to such building, tank, or system.

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Section 3. **Rulemaking authority and requirements.** (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. Such rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules shall require the owner to place his name and phone number on his anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules.

Section 4. **Preexisting facilities.** Any facility in operation prior to the adoption of rules under [section 3] that is not in compliance with the rules must be allowed to continue in operation unless the department, after inspection and written notice to the owner or operator, makes a determination that the facility presents a safety hazard to employees, other persons using the facility, or the public.

Section 5. **Variance.** A person who owns or controls a facility may request in writing from the department a variance, which is an exemption or partial exemption from any rule governing the design, construction, repair, alteration, location, installation, or operation of a facility.

Section 6. **Enforcement.** [Sections 1 through 7] must be enforced as provided in 80-10-303.

Section 7. **Funding.** Administration and enforcement of the provisions of [sections 1 through 7] and the rules adopted under [section 3] must be funded through expenditures of the anhydrous ammonia account established under 80-10-207(5).

Section 8. Section 80-10-207, MCA, is amended to read:

"80-10-207. Fees. (1) There shall be paid to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers sold in packages of 10 pounds or less, and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(a) inspection *of fertilizers other than anhydrous ammonia*, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. Any change in fee becomes effective on

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the first day of a reporting period. All registrants shall be given notice of any change in fees before the effective date.

(b) inspection of anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the anhydrous ammonia inspection fee not to exceed a maximum of 65 cents per ton to maintain adequate funding for the administration and enforcement of [sections 1 through 7]. Any change in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia shall be given notice of any change in fees before the effective date of the fee adjustment.

(c) assessment, the fee prescribed in 80-10-103. The assessment fee shall be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold per 6-month period, there shall be paid to the department a fee of $5 per soil amendment per 6-month period in lieu of the 10 cents per ton fee. Inspection fees shall be used by the department for administration of this part.

(3) (a) Every registrant and licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer in packages of 10 pounds or less and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period. The registrant or licensee shall pay the proper fees, as set forth in subsection (1) of this section, at that time.

(b) If the tonnage report is not filed and the payment of fees is not made within 30 days after the end of the period a collection fee amounting to 10% of the amount due but not less than $10 shall be assessed against the registrant or licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant or licensee.

(4) *Except as provided in subsection (5), all* fees collected for licenses, registration, and inspection and moneys collected as penalties shall be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(b) shall be deposited in the state treasury to the credit of the state special revenue fund, anhydrous

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ammonia account, for the administration and enforcement of [sections 1 through 7] and the rules adopted thereunder."

Section 9. Section 80-10-303, MCA, is amended to read:

"**80-10-303. Violations — enforcement proceedings — judicial review.** (1) If it appears from the examination of any commercial fertilizer *or from the inspection of any anhydrous ammonia facility* that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter is guilty of a misdemeanor and shall be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable."

Section 10. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 11. **Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 80, chapter 10.

Approved April 2, 1985.

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CHAPTER NO. 311

[HB 136]

AN ACT ALLOWING OPERATION OF A MOTORBOAT FOR 20 DAYS AFTER TRANSFER OF OWNERSHIP FROM A REGISTERED BOAT DEALER OR MANUFACTURER WITHOUT DISPLAY OF REQUIRED NUMBERS AND DECAL; ELIMINATING THE SPECIAL PENALTY PROVISION FOR FAILURE TO DISPLAY NUMBERS AND DECAL TO MAKE VIOLATION PUNISHABLE AS A MISDEMEANOR UNDER THE GENERAL PENALTY PROVISION; AMENDING SECTION 23-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-511, MCA, is amended to read:

"**23-2-511. Operation of unnumbered motorboats prohibited — display of decals.** (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect; and

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) *Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 20 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 20 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

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CHAPTER NO. 312

[HB 167]

AN ACT TO REVISE THE REGISTRATION PERIOD FOR MOTORBOATS AND THE LICENSURE PERIOD FOR MOTORBOAT DEALERS; AMENDING SECTIONS 23-2-512, 23-2-513, AND 23-2-515, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-512, MCA, is amended to read:

"**23-2-512. Identification number.** (1) The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat is owned or taxable on forms prepared and furnished by the division of motor vehicles. The application must be signed by the owner of the motorboat and be accompanied by a fee of $1. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the division of motor vehicles, stating the number assigned to the motorboat and the name and address of the owner.

(2) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor, who shall enter on the application, in a space to be provided for that purpose, the market value and taxable value of the motorboat for the year for which the application for registration is made.

(3) The applicant, upon the filing of the application, shall pay to the county treasurer the registration fee and the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) Should the ownership of a motorboat change, a new application form with fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(5) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the division of motor vehicles must be in conformity.

(6) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

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(7) Certificates of number expire on *December 31* of each year and may not be in effect unless renewed under this part.

(8) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat does not terminate the certificate of number.

(9) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The division of motor vehicles may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(10) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat by its identifying number may be carried as to interfere with the motorboat's identification. No number other than the number and license decal assigned to a motorboat or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat whenever the motorboat is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, but a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(11) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(12) An owner of a motorboat must within a reasonable time notify the division of motor vehicles, giving the motorboat's identifying number and

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the owner's name when that motorboat becomes documented as a vessel of the United States or is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use."

Section 2. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's identification number. (1) A dealer or manufacturer may apply directly to the division of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The division of motor vehicles shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (10), as amended, except that no boat may be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on *December 31* of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(10), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section."

Section 3. Section 23-2-515, MCA, is amended to read:

"23-2-515. License decals to be displayed. (1) Every Montana boat numbered in accordance with the provisions of 23-2-512 and 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon receipt of a certificate of tax of personal property showing payment

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of tax on the motorboat for the current year, shall issue a pair of decals prepared and furnished by the division of motor vehicles with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the division of motor vehicles and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of *December 31* of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers."

Section 4. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks and the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Implementation.** Certificates of number and license decals for motorboats and motorboat dealers expiring on April 30, 1985, shall be renewed for the period from May 1, 1985, to December 31, 1985, and all amounts collected in connection with the issuance must be prorated for that portion of the year.

Section 6. **Effective date.** This act is effective on passage and approval and applies to registration and licensure periods, as provided in section 5, and to subsequent periods.

Approved April 2, 1985.

CHAPTER NO. 313

[HB 177]

AN ACT TO MAKE THE INTEREST RATE ON PROPERTY TAXES PAID BY A REDEMPTIONER THE SAME AS THE RATE ON DELINQUENT PROPERTY TAXES GENERALLY; REQUIRING THAT ANY INTEREST IN EXCESS OF 8 PERCENT COLLECTED BY THE COUNTY TREASURER ON A REDEMPTION FROM A TAX SALE BE DEPOSITED IN THE COUNTY GENERAL FUND; AMENDING SECTION 15-18-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-102, MCA, is amended to read:

"**15-18-102. Redemption from tax sales.** *(1)* In all cases where real estate has been sold for delinquent taxes, the purchaser or his assignee at such tax sale may subsequent thereto pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land

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was sold, with interest thereon, pay the subsequent taxes paid by the purchaser or his assignee at such tax sale, with interest thereon at the rate *established for delinquent taxes in 15-16-102*, from the date of the payment of such taxes. In all notices of application for tax deed, the applicant shall state, in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate *established for delinquent taxes in 15-16-102*, from the date of such payment, and no redemption shall be made until the amount of such sale with interest and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands.

(2) All interest in excess of 8% paid by the redemptioner shall be promptly deposited by the county treasurer in the county general fund."

Section 2. **Effective date — applicability date.** This act is effective on passage and approval and applies to subsequent taxes paid by a tax sale purchaser or his assignee after the effective date of this act.

Approved April 2, 1985.

CHAPTER NO. 314

[HB 238]

AN ACT REVISING AND CLARIFYING DRIVER'S LICENSE REINSTATEMENT PROVISIONS; AMENDING SECTION 61-5-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation.** (1) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the division may not then issue a new license unless and until it is satisfied, after investigation of *the* driving ability of the person *and upon a showing by its records or other sufficient evidence*, that *the person is eligible to be licensed to drive in this state*. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or a narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof, or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the division shall, upon receiving a report

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of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail."

Approved April 2, 1985.

CHAPTER NO. 315

[HB 359]

AN ACT TO PROVIDE THAT LOANS GUARANTEED BY OR COVERED BY TAKEOVER AGREEMENTS OF STATE AGENCIES OR BOARDS ARE NOT SUBJECT TO THE LOAN LIMITS OF SECTION 32-1-432, MCA; AMENDING SECTION 32-1-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-432, MCA, is amended to read:

"32-1-432. Limitations on loans. (1) (a) The total loans to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

(c) The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of 100% of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or

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agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, partnership, or unincorporated association. That portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds made by a bank to another bank if the term of the loan does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guarantee or by commitments or agreements to take over or purchase such loan made by an agency or board of the state of Montana authorized by law to provide such guarantees, commitments, or agreements."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 316

[HB 401]

AN ACT MAKING A RAW MILK TESTING PROGRAM A DISCRETIONARY RATHER THAN MANDATORY FUNCTION OF THE DEPARTMENT OF COMMERCE; AMENDING SECTION 81-23-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-105, MCA, is amended to read:

"**81-23-105. Testing of milk.** (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants which receive raw milk directly from producers, the department of commerce *may* establish a program of testing such raw milk.

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(2) The department of commerce may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program shall be licensed by the animal health division of the department of livestock.

(4) The department of commerce may conduct all types of sampling, grading, and testing techniques which it considers necessary to carry out the intent of this section."

Section 2. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 317

[HB 469]

AN ACT REVISING THE METHOD FOR DETERMINING THE PROPERTY TAX REDUCTION ON DESTROYED PROPERTY; AMENDING SECTION 15-16-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-611, MCA, is amended to read:

"15-16-611. Reduction of property tax for property destroyed by natural disaster. (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property or a trailer or mobile home as described in *15-6-142* have been destroyed to such an extent that such improvements have been rendered unsuitable for their previous use by natural disaster, adjust *the taxable value on the property, accounting for the destruction.*

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 as provided in subsection *(3)* of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on *the original taxable value of* the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; *and*

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that

the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1985.

Approved April 2, 1985.

CHAPTER NO. 318

[HB 476]

AN ACT AMENDING SECTION 3-10-303, MCA, TO EXPAND THE CONCURRENT JURISDICTION THAT THE JUSTICE'S COURT HAS WITH THE DISTRICT COURT IN MISDEMEANOR CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment;

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding *$500 or imprisonment exceeding 6 months or both such fine and imprisonment*;

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings; and

(5) jurisdiction of all violations of Title 61, chapter 10."

Approved April 2, 1985.

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CHAPTER NO. 319

[HB 487]

AN ACT AUTHORIZING THE HEALTH FACILITY AUTHORITY TO ISSUE BONDS AND NOTES IN AN AMOUNT NOT TO EXCEED $150 MILLION IN EACH BIENNIUM; AMENDING SECTION 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-302, MCA, is amended to read:

"**90-7-302. Bonds and notes of the authority.** (1) The authority may *in each biennium* borrow money and issue bonds *and notes in an aggregate principal amount not to exceed $150 million, exclusive of bonds or notes issued to refund its outstanding bonds or notes.*

(2) Bonds must be authorized and dated and shall mature as the authority may specify, except that no bond may mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves therefor;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

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Section 2. **Extension of authority.** Any existing authority of the health facility authority to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 320

[HB 505]

AN ACT TO CLARIFY THAT TOWNS AND CITIES OF THE SECOND AND THIRD CLASS ARE GOVERNED BY THE ANNEXATION PROVISIONS OF SECTIONS 7-2-4321 THROUGH 7-2-4325, MCA; AMENDING SECTIONS 7-2-4321 AND 7-2-4325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4321, MCA, is amended to read:

"7-2-4321. Annexation of contiguous land by towns and municipalities of the second or third class. Any tracts or parcels of land which shall be contiguous to any incorporated *towns or any incorporated* cities of the second and third class, *as classified in 7-1-4111,* may be embraced within the corporate limits thereof and the boundaries of such *towns or* cities of the second and third class extended so as to include the same in the manner provided in 7-2-4322 through 7-2-4325."

Section 2. Section 7-2-4325, MCA, is amended to read:

"7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole shall adjoin the city *or town*, they may be included in one resolution under 7-2-4321 through 7-2-4325, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing."

Approved April 2, 1985.

CHAPTER NO. 321

[HB 544]

AN ACT AMENDING THE DEFINITION OF "SPECIAL FUEL" TO INCLUDE COMPRESSED NATURAL GAS; SETTING A TAX RATE ON COMPRESSED NATURAL GAS; AND AMENDING SECTIONS 15-70-301 AND 15-70-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions shall apply:

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(1) "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel dealer or special fuel user, under such terms and conditions as the department of revenue may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Department" means the department of revenue.

(3) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(4) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

(5) "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(6) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana. *The term includes compressed natural gas.*

(7) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

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(9) "Use" means either the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state."

Section 2. Section 15-70-322, MCA, is amended to read:

"**15-70-322. Tax on use of special fuels.** *(1) Except as provided in subsection (2), there* is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways equivalent to the lawful tax levied on motor fuel under 15-70-321. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The United States, Montana and all other states, and the counties, incorporated cities and towns, and school districts of this state are exempt from the levy and imposition of this tax.

(2) The tax levied on compressed natural gas is 7 cents per 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 322

[HB 557]

AN ACT TO CONSIDER AS RESIDENTS FOR THE PURPOSE OF OBTAINING FISHING AND HUNTING LICENSES THOSE NONRESIDENTS WHO MEET CERTAIN CONDITIONS, INCLUDING BEING EMPLOYED IN MONTANA FOR AT LEAST 12 MONTHS A YEAR AND PAYING TAXES IN MONTANA; AMENDING SECTIONS 87-2-102 AND 87-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions shall apply:

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(1) Members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to duty in Montana and their dependents who reside in their Montana household with them, after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) Any person who has been a resident of the state of Montana, as defined in 1-1-215, for a period of 6 months immediately prior to making application for said license shall be eligible to receive a resident hunting, fishing, or trapping license.

(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of 30 days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp.

(4) A person meeting all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (4)."

Section 2. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. Except as provided in *subsections* (2) *and (3)*, the statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) *Except as provided in subsection (3), department* employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant must apply to the director and must submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of

87-2-102(4). The director shall process the application in an expedient manner.

(4) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(5) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor."

Section 3. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 323

[HB 570]

AN ACT REVISING THE LAW CONCERNING THE FREQUENCY OF FIRE SAFETY INSPECTIONS; EXPANDING INSPECTIONS TO COVER VIOLATIONS OF RULES; AMENDING SECTION 50-61-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-61-114, MCA, is amended to read:

"50-61-114. Fire chief and county sheriff to make inspections. The chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists shall, for the purpose of examining the premises for violations of this chapter *and rules adopted under 50-3-103 for the enforcement of this chapter:*

(1) enter into school buildings at least once each 12 months; and

(2) enter into all other buildings and upon all other premises within their jurisdiction at least once each 18 months."

Section 2. **Extension of authority.** Any existing authority of the state fire marshal to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

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CHAPTER NO. 324

[HB 573]

AN ACT PROVIDING FOR ODOMETER DISCLOSURE UPON TRANSFER OF MOTOR VEHICLE OWNERSHIP; PROVIDING PENALTIES; AMENDING SECTION 61-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-201, MCA, is amended to read:

"61-3-201. Transfer of interest. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of the certificate, and his signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the endorsed certificate of ownership *with the odometer mileage statement required under [section 2]* and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the division. No certificate of ownership or certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the division an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of such interest. The statement shall set forth the reason for the involuntary transfer, the interest so transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting such transfer, and other information requested by the division. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with the statement. If the division is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and thereafter, but not less than 5 days thereafter, shall issue a new certificate of ownership and

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certificate of registration to the person entitled thereto. The notice herein required is complied with by deposit in the post office in Deer Lodge, Montana, such notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration but the division need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) (a) In the event of the death of the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered hereunder and not exceeding a combined value of $15,000 without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving spouse or other heir unless such property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the division setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer.

(c) The division is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) shall prevent any secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of such assignment must be filed with the division and record thereof made upon its records.

(7) The certificates of ownership shall remain valid until canceled by the division upon a transfer of any interest shown therein and need not be renewed annually."

Section 2. **Odometer disclosure requirements.** (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement signed by each seller, containing the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

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(d) the purchaser's name and current address;

(e) the vehicle year, make, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of his knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, he shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 6 years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers prior to its first retail sale, unless such vehicle has been used as a demonstrator.

Section 3. **Penalty for tampering with odometer or violating odometer statement requirements.** (1) It is unlawful for a person to tamper with the odometer of a motor vehicle. It is considered tampering if a person removes, turns back, or changes the reading on the odometer, except when repairing or replacing a defective odometer and setting it anew to show the true mileage, or if a person sells, offers for sale, uses, installs, or causes to be installed any device that causes the odometer to register a mileage reading other than the true mileage for the purpose of deceiving a prospective purchaser. For purposes of this section, the true mileage is that driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) A person who purposely or knowingly violates the provisions of [section 2] or subsection (1) of this section is guilty of a misdemeanor. If that person is a motor vehicle dealer, the division shall place the dealer in a 1-year probationary license status upon a first conviction. For a second or subsequent conviction of a violation of [section 2] or subsection (1) of this section, the division may suspend or revoke the dealer's license. Action by the division under this subsection must conform to the contested case procedures in Title 2, chapter 4.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 61, chapter 3, and the provisions of Title 61 apply to sections 2 and 3.

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Section 5. **Extension of authority.** Any existing authority of the department of justice, motor vehicles division, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1985.

CHAPTER NO. 325

[HB 586]

AN ACT TO AUTHORIZE THE CONFISCATION AND DISPOSAL OF CONTRABAND POSSESSED BY INMATES OR RESIDENTS OF ADULT OR YOUTH CORRECTIONAL INSTITUTIONS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposition of contraband.** (1) Cash possessed in excess of the amount allowed by the policy of an adult or youth correctional institution or obtained in violation of such a policy may be confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

(2) The department of institutions shall adopt policies for the disposition of other contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 326

[HB 623]

AN ACT REVISING THE PROCEDURE FOR ISSUING HEALTH FACILITY BONDS; PROVIDING THAT BOND PROCEEDS MAY NOT BE EXPENDED FOR A FACILITY UNLESS IT HAS BEEN REVIEWED AND APPROVED BY THE APPROPRIATE AUTHORITIES; AMENDING SECTION 90-7-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-303, MCA, is amended to read:

"90-7-303. Procedure for issuance of bonds. (1) The authority may not undertake to finance any eligible health facility unless, prior to the

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issuance of any bonds or notes, the members find that such facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health care facilities.

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any facility unless such facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has been shown that such facility is financially feasible and that there will be sufficient revenues to assure that principal and interest payments are made when they become due.

(4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has considered the ability of the health institution to operate such a facility based on the health institution's experience and expertise.

(5) The authority must insure that its financings consistently provide fair and realistic terms and covenants sufficient to protect the position of the lenders or bondholders."

Section 2. **Extension of authority.** Any existing authority of the health facility authority to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to any health facility financing undertaken after October 1, 1983.

Approved April 2, 1985.

CHAPTER NO. 327

[HB 629]

AN ACT REALLOCATING MONEY FROM FINES COLLECTED FROM PERSONS APPREHENDED OR ARRESTED BY A SHERIFF OR DEPUTY SHERIFF FOR A MOTOR VEHICLE VIOLATION; AMENDING SECTIONS 61-12-701 AND 61-12-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-701, MCA, is amended to read:

"61-12-701. Disposition of fines and forfeitures. (1) All fines and forfeitures collected in any court for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon, *if the apprehension or arrest was by a highway patrolman,* must be paid to the state treasurer and by him credited to the general fund of the state *or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund,*

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except for that portion of the fines otherwise allocated by law which *must* be paid into the appropriate accounts in the state special revenue fund.

(2) At the time of payment of *the* fine or forfeiture, there *must* be filed with the *appropriate* treasurer a complete statement showing the total of the fines or forfeitures received or incurred, *giving* the title of the court and cause, and subscribed to by the person or officer making the payments."

Section 2. Section 61-12-702, MCA, is amended to read:

"61-12-702. Court costs — fees and expenses of counties. The court, after deducting all costs and fees, shall immediately transmit the balance of *the* fine to the state *or county* treasurer as provided by law. The expenses of the county, except fees of officers who are paid a regular salary, *are* a proper claim against the state *or county* and claims *must* be paid in the manner provided by law out of the funds appropriated for such purposes."

Approved April 2, 1985.

CHAPTER NO. 328

[HB 655]

AN ACT REQUIRING THE APPROPRIATION OF ADMINISTRATIVE EXPENSES FOR THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, TEACHERS' RETIREMENT SYSTEM, AND THE RURAL REHABILITATION PROGRAM; PROVIDING THAT INCREASES IN SUCH ADMINISTRATIVE EXPENSES MUST BE APPROVED THROUGH THE BUDGET AMENDMENT PROCESS; AMENDING SECTIONS 19-3-805, 19-4-606, AND 80-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-805, MCA, is amended to read:

"19-3-805. Administrative expenses. In addition to the contributions elsewhere provided in this chapter, on January 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. *The appropriation of these* fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter. *Any request for an increase of spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.*"

Section 2. Section 19-4-606, MCA, is amended to read:

"19-4-606. Expense fund. The expense fund is the fund to which all moneys *appropriated* for the administrative expenses of the retirement system shall be credited and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or other benefits. *Any request for an increase of spending*

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authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4."

Section 3. Section 80-2-102, MCA, is amended to read:

"80-2-102. Agreements with United States secretary of agriculture authorized. *(1)* The department shall enter into agreements with the secretary of agriculture of the United States under section 2(f) of Public Law 499, 81st congress, upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended, and do all things necessary to carry out the agreements.

(2) The program must be administered with funds appropriated for such purposes and any request for an increase of spending authority for administering the program requires a budget amendment and is subject to Title 17, chapter 7, part 4."

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 2, 1985.

CHAPTER NO. 329

[HB 692]

AN ACT ESTABLISHING A CLASS OF TRAPPING LICENSE FOR YOUTHS 6 THROUGH 12 YEARS OF AGE; PLACING A MINIMUM AGE RESTRICTION ON OTHER TRAPPING LICENSES; AMENDING SECTIONS 87-2-601 AND 87-2-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Class C-3—youth trapping license.** Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 6 years of age or older and less than 13 years of age, upon making application and payment of a fee of $3 to the department, may receive a Class C-3 license, which authorizes the holder to trap fur-bearing animals, the trapping of which has not been restricted by the commission, within the state of Montana at such times and in such manner as may be lawful under the laws of the state and the regulations of the department, and at such places as may be designated in the license.

Section 2. Section 87-2-601, MCA, is amended to read:

"87-2-601. Class C—trapper's license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, *who is 13 years of age or older,* upon making application and payment of a fee of $20 to the department, may receive a Class C license which shall authorize the

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holder thereof to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license."

Section 3. Section 87-2-603, MCA, is amended to read:

"87-2-603. Class C-2—nonresident trapper's license. (1) Any person not a resident as defined in 87-2-102, *who is 13 years of age or older,* upon making application to the department and paying a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. Such trapping or snaring is permitted only after October 15 of each license year, in such manner as may be lawful under the laws of the state and the rules of the commission, and at such places as may be designated in the license.

(2) Any person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1)."

Section 4. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks or the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 2, part 6, and the provisions of Title 87 apply to section 1.

Section 6. **Effective date.** This act is effective July 1, 1985.

Approved April 2, 1985.

CHAPTER NO. 330

[HB 713]

AN ACT TO SPECIFICALLY INCLUDE VOLUNTEER FIREFIGHTERS AND OFFICERS OF A NONPROFIT VOLUNTEER FIRE COMPANY IN THE "GOOD SAMARITAN" LIMITS ON LIABILITY; AMENDING SECTION 27-1-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-714, MCA, is amended to read:

"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, *any volunteer firefighter or officer of any nonprofit volunteer fire company,* or any other person who in good faith renders emergency care or assistance without

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compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care *or assistance.*

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as any reimbursement received for such volunteer services does not exceed 25% of his gross annual income.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such refusal does not constitute gross negligence or a willful or wanton act or omission."

Approved April 2, 1985.

CHAPTER NO. 331

[HB 734]

AN ACT TO PROHIBIT THE POSSESSION OF BOTH A CLASS A-5 AND A CLASS A-7 ELK LICENSE IN THE SAME YEAR; INCREASING THE FEE FOR THE CLASS A-7 TAG TO $10; AMENDING SECTION 87-2-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses *at the prescribed cost* which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $9;

(b) Class A-4, deer B tag, $6;

(c) Class A-5, elk tag, $10;

(d) Class A-6, black or brown bear tag, $8;

(e) Class A-7, antlerless elk tag, *$10.*

(2) The holder of a Class A-7 antlerless elk license is entitled to take surplus antlerless elk in areas designated by the commission and at such

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times *and upon such terms* as set forth by the commission *but may not simultaneously possess a Class A-5 and a Class A-7 license in the same year. The commission shall include in the terms of issuance of the Class A-7 license a requirement for surrender of a current Class A-5 license if held by a person at the time he purchases a Class A-7 license. If a current Class A-5 license is surrendered, as required by this section, the Class A-7 license must be issued without cost to the holder. No* person may take more than one elk during any license year, and a person *holding a Class A-7 antlerless elk tag* may not take *an* elk during the same license year with a Class A-5 elk tag."

Section 2. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective March 1, 1986.

Approved April 2, 1985.

CHAPTER NO. 332

[HB 738]

AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician or a health care facility.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Malpractice claim" means any claim or potential claim *of a claimant* against a health care provider for medical treatment, lack of medical

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treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the *claimant*, whether the *claimant's* claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(5) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(6) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, *who at the time of the assessment:*

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services, whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment must be annually set by the director *and must be apportioned* among physicians, hospitals, and other health care *providers by group. As to the group of all physicians, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must*

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be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. *All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge.* The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 in connection with physicians' annual registration fees."

Section 3. Section 27-6-301, MCA, is amended to read:

"27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the *claimant* or his attorney, to the director of the panel."

Section 4. Section 27-6-303, MCA, is amended to read:

"27-6-303. Amendments to application. *Amendments* to the application *may* be *authorized by rule.*"

Section 5. Section 27-6-401, MCA, is amended to read:

"27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. *Six panel members shall sit in review of each case.* Three panel members *who are physicians* and three panel members *who are attorneys* shall sit in review of each case *in which the claim is heard only against one or more physicians. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.*

(2) In *all other* cases, two of the panel members *must* be *physicians,* one panel member *must* be *an administrator of the same type of* health care *facility, and three panel members must be attorneys.*"

Section 6. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review *as to all health care providers named in the application as parties to the panel proceeding and as to all*

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other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after *either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the consent of the parties to the claim, or* the panel's final decision, *whichever occurs first,* is entered in the permanent files of the panel and a copy is served upon the complainant *or* his attorney *if he is represented by counsel,* by certified mail."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 333

[HB 781]

AN ACT TO GIVE PROSECUTORS THE RIGHT TO APPEAL FROM A JUSTICE'S OR CITY COURT TO THE DISTRICT COURT IN CERTAIN CASES; AMENDING SECTION 46-17-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal.** (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) *A party* may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, *except that the state may only appeal in the cases provided for in 46-20-103.*

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the *appellant* to perfect the appeal."

Approved April 2, 1985.

CHAPTER NO. 334

[HB 803]

AN ACT CONFORMING JUROR AND WITNESS FEES IN COURTS NOT OF RECORD TO THOSE OF COURTS OF RECORD; AMENDING SECTIONS 3-15-203, 26-2-502, AND 26-2-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-203, MCA, is amended to read:

"**3-15-203. Fees in courts not of record and coroner's inquests.** (1) *A jury panel member,* in both civil and criminal actions, shall receive

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a fee of $12 per day *for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the court. A jury panel member selected for a case shall receive an additional $13 per day while serving.*

(2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) Jurors in coroner's inquests shall receive a fee of $7.50 per day.

(4) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage."

Section 2. Section 26-2-502, MCA, is amended to read:

"**26-2-502. Witnesses in courts not of record — civil actions.** Witnesses in courts not of record in civil actions and proceedings shall receive *$10* for each day's actual attendance and mileage as provided in 2-18-503 for each mile actually traveled in going from their residences by the usual traveled route to the court and return."

Section 3. Section 26-2-503, MCA, is amended to read:

"**26-2-503. Witnesses in courts not of record — criminal actions and on coroner's inquests.** Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive *$10* per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return."

Approved April 2, 1985.

CHAPTER NO. 335

[HB 816]

AN ACT TO SPECIFY THE TYPE OF LETTERING USED ON THE STATE FLAG; AMENDING SECTION 1-1-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-502, MCA, is amended to read:

"**1-1-502. State flag.** There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V."; and

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above the great seal of the state shall be the word "MONTANA" in *helvetica bold* letters of gold color equal in height to one tenth of the total vertical measurement of the blue field."

Approved April 2, 1985.

CHAPTER NO. 336

[HB 421]

AN ACT TO ALLOW THE DEPARTMENT OF COMMERCE TO USE UNSALARIED AIR SEARCH AND RESCUE VOLUNTEERS FOR WHOM THE DEPARTMENT MUST PROVIDE WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-71-118 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Air search and rescue volunteers — expenses — workers' compensation coverage.** (1) The department may temporarily employ an airman or other person who volunteers to aid in the aerial search for a missing aircraft being conducted by the department.

(2) The department and volunteer stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The department must have each volunteer covered by the Workers' Compensation Act in Title 39, chapter 71, during the course of the volunteer's assistance.

(3) Volunteers are not salaried employees and are not entitled to wages and benefits. The department may in its discretion reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for fuel, oil, food, and lodging.

Section 2. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

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(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-302 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college;

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers; *or*

(e) an airman or other person employed as a volunteer under [section 1].

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 3. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) *except employment of a volunteer under [section 1]*;

(c) employment of members of an employer's family dwelling in the employer's household;

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(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only *except employment of a volunteer under [section 1]*;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 4. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 67, and the provisions of Title 67 apply to section 1.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

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CHAPTER NO. 337

[HB 782]

AN ACT TO ALLOW CAPITOL SECURITY GUARDS, THROUGH AGREEMENT BETWEEN THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AND THE CITY OF HELENA, MONTANA, TO ISSUE PARKING CITATIONS WITHIN THE CONFINES OF THE CAPITOL COMPLEX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Traffic citations within capitol complex.** The director of the department of administration may in his discretion enter into an agreement with the city of Helena, Montana, to authorize capitol security guards employed by the department to issue citations for parking violations as defined by state or municipal laws which occur within the boundaries of the capitol complex or on streets or alleys contiguous thereto. All such citations must be considered within the jurisdiction of the city of Helena, Montana, and must be handled in the same manner as citations issued by peace officers thereof.

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1985.

CHAPTER NO. 338

[SB 41]

AN ACT TO CLARIFY THE DISTRIBUTION OF INCOME AND EARNINGS FROM COAL SEVERANCE TAX FUNDS BY PROVIDING THAT A PORTION OF THOSE FUNDS BE INCLUDED IN THE IN-STATE INVESTMENT FUND; AMENDING SECTIONS 17-6-305 AND 17-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy. (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) *and 15% of the annual income and earnings on*

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the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, as required by 17-6-201(1), the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 2. Section 17-6-306, MCA, is amended to read:

"17-6-306. Montana in-state investment fund. The Montana in-state investment fund consists of:

(1) 25% of the revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5);

(2) the principal payments on all investments made from the Montana in-state investment fund; *and*

(3) 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)."

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to appropriations on and after July 1, 1983.

Approved April 3, 1985.

CHAPTER NO. 339

[SB 96]

AN ACT TO CLARIFY THAT THE LAWS PERTAINING TO SEISMIC EXPLORATION APPLY TO EXPLORATION DONE BY MEANS OF NONEXPLOSIVES AS WELL AS EXPLORATION DONE BY MEANS OF EXPLOSIVES; TO INCREASE FROM 10 TO 30 DAYS THE TIME REQUIRED TO RESPOND TO A COUNTY CLERK AND RECORDER'S REQUEST FOR A RECORD OF OPERATIONS; AMENDING SECTIONS 82-1-101, 82-1-104, 82-1-107, 82-1-108, AND 82-11-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-101, MCA, is amended to read:

"82-1-101. Persons required to comply. (1) A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of *seismic* exploration in which exploration *entry is made upon the surface estate* for the *acquisition* of geophysical data for any

purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates "seismograph crews", as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

(2) The board of oil and gas conservation shall adopt rules requiring adequate identification of *seismic* exploration crews operating in this state and designating areas where *seismic* exploration and activities may not be allowed."

Section 2. Section 82-1-104, MCA, is amended to read:

"82-1-104. Surety bond — restoration of surface. (1) *Prior to performing such seismic activity, a* person, firm, or corporation shall also file with the secretary of state a good and sufficient surety bond in the amount of $10,000 for a single such *seismic* crew or a blanket surety bond in the amount of $25,000 for all such *seismic* crews operating within the state for such person, firm, or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such *seismic* exploration. *Partial or complete forfeiture of the bond must be determined by the appropriate court of civil jurisdiction.*

(2) Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation to contain any water within its native strata by filling the hole with bentonite mud, cement, *or other material approved by the board of oil and gas conservation* as required to contain the water and capping the same in a manner and with a material specified by the board, the top of which cap shall be of sufficient depth below the surface of the land to allow cultivation. The portion of the hole above the cap shall be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation shall *remove all stakes, markers, cables, ropes, wires, and debris or other material used in such exploration and shall* also restore the surface around *any shot holes* as near as practicable to its original condition.

(4) The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm, or corporation."

Section 3. Section 82-1-107, MCA, is amended to read:

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"82-1-107. Permit holder to furnish information to surface user. *(1)* Before commencing *seismic* activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity, and upon request the following information shall also be furnished:

(a) the name and permanent address of the *seismic* exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(b) evidence of a valid permit to engage in *seismic* exploration;

(c) name and address of the company insuring the *seismic* firm *or, if self-insured, evidence of such self-insurance*;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned *seismic* activity *and where it* will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned *seismic* activity.

(2) The surface user is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained."

Section 4. Section 82-1-108, MCA, is amended to read:

"82-1-108. Filing record of work performed. (1) Within 3 months from the day any firing of shotpoints in *seismic* exploration is done by any person, firm, or corporation within this state, such person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) Such person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to his property has resulted from the use of the seismograph and explosives in *seismic* operations at some location within the maximum 4-square mile area, and the request shall designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder shall be supplied within *30* days from the date on which the request is received."

Section 5. Section 82-11-122, MCA, is amended to read:

"82-11-122. Notice of intention to drill or conduct seismic operations. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and

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obtaining a drilling permit as provided in 82-11-134. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103."

Section 6. **Extension of authority.** Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1985.

CHAPTER NO. 340

[SB 155]

AN ACT REVISING THE LAWS RELATING TO THE SALE OF LANDS OR WATERS, RENTAL OF OFFICE SPACE, AND PROCUREMENT OF CONSTRUCTION PROJECTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTIONS 87-1-106 AND 87-1-209, MCA; REPEALING SECTION 87-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-106, MCA, is amended to read:

"87-1-106. Fish and game offices. The principal offices of the commission and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana."

Section 2. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

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(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within *60* days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. *If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.* The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(4) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Section 3. **Repealer.** Section 87-1-211, MCA, is repealed.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1985.

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CHAPTER NO. 341

[SB 206]

AN ACT REVISING THE METHOD OF FILING SECURITY INTERESTS IN MOTOR VEHICLES AND SNOWMOBILES; EXEMPTING VEHICLES CONSTITUTING DEALER INVENTORY FROM PERFECTION OF SECURITY INTERESTS BY NOTATION ON TITLE; AMENDING SECTIONS 23-2-612, 61-3-103, AND 61-3-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-612, MCA, is amended to read:

"23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of this part, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the division of motor vehicles, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the division until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 shall be forwarded to the division of motor vehicles for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the division of motor vehicles). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the division.

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(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The division, upon receipt of the certificate of ownership and application for a new certificate, *containing notice of a security interest*, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 2. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests, rights, procedure, fees. (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless *a lien notice, on a form approved by the division, that shows a security interest has been created,* has been filed with the division as provided in this section. The division shall not file any security *interest* or other lien unless it is accompanied by *or specified in the application for a* certificate of ownership of the vehicle encumbered. *If the approved notice form is transmitted to the division, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor.* The division shall file the security *interest or* lien by entering the name and address of the secured party upon the face of the certificate of ownership. The division shall mail a statement certifying to the filing of a security *interest* or lien to the secured party and mail the certificate of ownership to the owner at the address given on the certificate. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security *interest* or lien is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) The filing of a security *interest* or other lien, as herein provided, perfects a security interest which has attached *at the time the certificate of ownership noting such interest is issued. Issuance of a certificate of ownership* constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

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(6) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the division.

(7) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the division the sum of $1 for each day thereafter that he fails to file such satisfaction.

(8) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the division shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(9) It shall not be necessary to refile with the division any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(10) A fee of $3 shall be paid to the division to file any security *interest* or other lien against a motor vehicle. The $3 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the division and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $3 shall be paid the division for issuing a certified copy of a *certificate of ownership subject to a* security *interest* or other lien on file in the office of the division, or for filing an assignment of any *security interest or other lien* on file with the division. All fees provided for in this section shall be deposited by the division in the motor vehicle recording account of the state special revenue fund."

Section 3. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of ownership — issuance — contents — joint ownership. (1) Upon completion of the application for certificate of ownership, on forms furnished by the division, the county treasurer shall forward one copy of the application to the division, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and complete address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle;

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(d) a description of the registered vehicle, including the year built and serial number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the division.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the division shall recheck the application. If there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the division.

(5) The certificate of ownership shall contain a notice to the division of a transfer of interest of the owner and such other statements as may be determined by the division."

Section 4. **Saving clause.** This act does not affect any security interest or lien filed or perfected prior to October 1, 1985.

Section 5. **Extension of authority.** Any existing authority of the division of motor vehicles to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1985.

CHAPTER NO. 342

[SB 230]

AN ACT TO EXEMPT PUBLIC AGENCIES FROM THE MONTANA HUMAN RIGHTS ACT AND THE GOVERNMENTAL CODE OF FAIR EMPLOYMENT PRACTICE TO THE EXTENT THAT THESE LAWS CONFLICT WITH THE PROHIBITION AGAINST NEPOTISM IN PUBLIC AGENCIES; AMENDING SECTIONS 49-2-303, 49-2-403, AND 49-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not

require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 2. Section 49-2-403, MCA, is amended to read:

"**49-2-403. Specific limits on justification.** (1) *Except as permitted in 49-2-303(3) and 49-3-201(5), sex,* marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 3. Section 49-3-201, MCA, is amended to read:

"**49-3-201. Employment of state and local government personnel.** (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

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(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 4. **Extension of authority.** Any existing authority of the human rights commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1985.

CHAPTER NO. 343

[SB 422]

AN ACT AMENDING THE LAW RELATING TO STATE AGENCY PROGRAM BUDGETS; REQUIRING ALL AGENCIES TO PROVIDE SPECIFIC GOALS AND OBJECTIVES AND TO REQUIRE CERTAIN INFORMATION RELATING TO BONDED INDEBTEDNESS OF THE UNIVERSITY SYSTEM; AMENDING SECTION 17-7-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Agency program budgets — form distribution and contents.** (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms shall be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and

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the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. *Such goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.*

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

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(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums."

Approved April 3, 1985.

CHAPTER NO. 344

[HB 635]

AN ACT TO ALLOW A SCHOOL DISTRICT TO BE REIMBURSED FOR NONBUS MILEAGE WHEN A VEHICLE IS DRIVEN BY A BUS DRIVER TO AN OVERNIGHT LOCATION OF A SCHOOL BUS MORE THAN 10 MILES FROM THE SCHOOL; AMENDING SECTION 20-10-141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-141, MCA, is amended to read:

"**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. *Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school.* A district may approve additional bus *or nonbus* miles within its own district or approved service area but may not claim reimbursement for such mileage. Any vehicle, the operation of which is reimbursed *for bus mileage* under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) 72 cents in fiscal 1984 and 80 cents in fiscal 1985 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

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(b) when the rated capacity is more than 45 children, an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 45 shall be added to a base rate of 72 cents in fiscal 1984 and 80 cents in fiscal 1985 and each year thereafter per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection *(4)(a)* by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection *(4)(b)* as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 2. **Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1985.

CHAPTER NO. 345

[HB 698]

AN ACT FURTHER CLARIFYING THE INFORMATION REQUIRED IN APPLICATIONS FOR METAL MINE OPERATING PERMITS; PROVIDING ADDITIONAL STANDARDS IN THE RECLAMATION PLAN; SPECIFYING ACTIONS AVAILABLE TO PERSONS WHO ARE ADVERSELY AFFECTED BY VIOLATIONS OF METAL MINE RECLAMATION PROVISIONS OR WHO ARE ALLEGEDLY HARMED BY METAL MINES DAMAGING THEIR WATER SUPPLY; AND MAKING CERTAIN MINOR CHANGES; AMENDING SECTIONS 82-4-335, 82-4-336, AND 82-4-338, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit

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shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of mining;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (3), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the

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hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 2. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of mining on that portion of mine complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

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(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. *The reestablished vegetative cover shall meet county standards for noxious weed control.*

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation *shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.*

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges."

Section 3. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

(3) No bond filed for an operating permit obtained under 82-4-335 may be released until the public has been provided an opportunity for a hearing."

Section 4. **Mandamus to compel enforcement.** (1) Any person having an interest that is or may be adversely affected, with knowledge that

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a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform his duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued under it. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order or permit issued under it. Any person having an interest that is or may be adversely affected may intervene as a matter of right in any such civil action.

(4) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

Section 5. **Action for damages to water supply — replacement.** (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in a mining or exploration operation to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

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(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

Section 6. **Codification instruction.** Sections 4 and 5 are intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to sections 4 and 5.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Extension of rulemaking authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1985.

CHAPTER NO. 346

[SB 257]

AN ACT TO REVISE A TIME FOR TRIAL LIMITATION IN THE DETAINER LAW SO THAT IT CONFORMS TO THE INTERSTATE AGREEMENT ON DETAINERS; AMENDING SECTION 46-31-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-31-101, MCA, is amended to read:

"46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by

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this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial *within 180 days* after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time

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of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have

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a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this

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agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation

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of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1985.

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CHAPTER NO. 347

[SB 357]

AN ACT REMOVING THE REQUIREMENT THAT A BUSINESS OPERATED ON THE SAME PREMISES AS AN ESTABLISHMENT LICENSED TO SELL ALCOHOLIC BEVERAGES CLOSE OFF FROM 2 A.M. TO 8 A.M. THE PART WHERE ALCOHOLIC BEVERAGES ARE SOLD; AMENDING SECTIONS 16-3-304 AND 16-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-304, MCA, is amended to read:

"**16-3-304. Closing hours for licensed retail establishments.** *Except as provided in 16-3-305, all* licensed establishments wherein alcoholic beverages are sold, offered for sale, or given away at retail shall be closed each day between 2 a.m. and 8 a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the *alcoholic beverage licensee* and employees of such licensed *establishment* shall be excluded *from the licensed premises.*"

Section 2. Section 16-3-305, MCA, is amended to read:

"**16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.** During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, give away, *consume, or allow the consumption of* alcoholic beverages. *When an establishment licensed to sell alcoholic beverages is operated in conjunction with* a hotel, restaurant, bus depot, railway terminal, *grocery store, pharmacy,* or other lawful business other than that of the sale of *alcoholic beverages,* then such other lawful business need not be closed."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 3, 1985.

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CHAPTER NO. 348

[HB 799]

AN ACT TO GENERALLY REVISE LAWS CONCERNING MUNICIPAL AND CITY COURTS; EXPANDING THE EXCLUSIVE JURISDICTION OF CITY COURTS; MAKING APPLICABLE TO CITY COURTS CERTAIN PROVISIONS CONCERNING THE CONDUCT OF MUNICIPAL COURT BUSINESS; PERMITTING CITY JUDGES TO SOLEMNIZE MARRIAGES; REQUIRING A PERSON TO DISPLAY HIS DRIVER'S LICENSE OR MOTOR VEHICLE INSURANCE CARD UPON DEMAND OF A CITY OR MUNICIPAL JUDGE; AMENDING SECTIONS 3-11-103, 3-11-206, 40-1-301, 61-5-116, AND 61-6-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-11-103, MCA, is amended to read:

"**3-11-103. Exclusive jurisdiction.** Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed *$2,500*, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed *$2,500*;

(4) when the amount claimed, exclusive of costs, does not exceed *$2,500*, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

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(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed *$2,500*; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Section 2. Section 3-11-206, MCA, is amended to read:

"3-11-206. City to provide facilities — conduct of court business. *(1)* The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(a) the office space, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(c) one copy of the latest edition of the Montana Code Annotated and all official supplements thereto or immediate access to the code and supplements.

(2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303 concerning conduct of municipal court business apply to the city court.

(b) If the governing body of a city establishes by ordinance the position of clerk of city court, 3-6-301 does not apply to the city court."

Section 3. Section 40-1-301, MCA, is amended to read:

"40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, *city judge*, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

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(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified."

Section 4. Section 61-5-116, MCA, is amended to read:

"61-5-116. License to be carried and exhibited on demand. Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, *a city or municipal judge*, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest."

Section 5. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the division of motor vehicles. The division may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.

(2) An applicant for registration of an automobile or a truck having a rated capacity of three-quarters of a ton or less, who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.

(3) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the division and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

(4) Every person shall carry in a motor vehicle being operated by him an insurance card approved by the division but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, *a city or municipal judge*, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest."

Approved April 3, 1985.

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CHAPTER NO. 349

[SB 130]

AN ACT TO GENERALLY STANDARDIZE NOTICE REQUIREMENTS RELATING TO THE CONDUCT OF BUSINESS OF LOCAL GOVERNMENT UNITS OTHER THAN MUNICIPALITIES; AMENDING SECTIONS 7-2-2704, 7-2-2756, 7-4-2307, 7-5-2301, 7-6-2326, 7-6-2342, 7-6-2605, 7-8-101, 7-8-2212, 7-8-2216, 7-8-2302, 7-8-2511, 7-11-228, 7-12-2105, 7-12-2159, 7-13-145, 7-13-208, 7-13-2205, 7-13-2304, 7-13-2345, 7-13-2506, 7-14-2706, 7-14-2739, 7-14-4630, 7-15-2103, 7-16-2324, 7-21-3422, 7-22-2212, 7-22-2406, 7-22-2446, 7-33-2102, 7-34-2107, 7-34-2153, 7-34-2157, 7-34-2162, 7-35-2102, AND 7-35-2115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Publication and content of notice.** Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) The newspaper must be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week; and

(c) published in the county where the hearing or other action will take place.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating publication. The first publication must be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

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(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105.

Section 2. **Mail notice.** (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

Section 3. Section 7-2-2704, MCA, is amended to read:

"7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the election administrator attached thereto and showing that the petition has been signed by not less than 35% of the registered electors of the county whose names appear upon the registration records of the county, as provided in 7-2-2702 and 7-2-2703, the board shall, immediately upon presentation of the petition, make and enter an order in its minutes fixing a day for considering and taking final action on the petition. The date for final action shall be not less than 30 or more than 35 days after the date when the order is made.

(2) The board shall cause a notice to be published *as provided in [section 1]* to the effect that the petition has been presented to the board asking for the abandonment and abolishment of the county and that any registered electors of the county interested therein may appear and be heard thereon."

Section 4. Section 7-2-2756, MCA, is amended to read:

"7-2-2756. Sale of acquired real property. (1) No real estate may be sold by the board of county commissioners unless the property has been

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appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of such county. Every sale of real estate shall be made at public sale, and notice shall be published *as provided in [section 1]*. No such real estate shall be sold for a price less than 90% of the appraised value thereof.

(2) The full purchase price of any real estate so sold shall not be required to be made in one payment; but the purchaser thereof may pay the same in four installments, the first of which shall be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest thereon at not less than 5% per annum. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for real estate, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(3) All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid, when such real estate shall be assessed at its full cash value. Any and all improvements placed on any such real estate after its purchase shall be subject to assessment and taxation at the full cash value thereof."

Section 5. Section 7-4-2307, MCA, is amended to read:

"**7-4-2307. Notice of hearing.** The county clerk or clerks shall cause notice of the hearing required by 7-4-2306 to be published *as provided in [section 1]*."

Section 6. Section 7-5-2301, MCA, is amended to read:

"**7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of $10,000 or for the construction of any building, road, or bridge for which must be paid a sum in excess of $10,000 or for the repair or maintenance of any building, road, or bridge for which must be paid a sum in excess of $25,000 shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published *as provided in [section 1]*.

(3) Every such contract shall be let to the lowest and best responsible bidder."

Section 7. Section 7-6-2326, MCA, is amended to read:

"**7-6-2326. Transfer of cash balance in fund at close of fiscal year.** (1) After a public hearing, if the cash balance remaining at the end

of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county.

(2) Notice of the hearing must be given *as provided in [section 1]* and *must* state generally the purpose and proposed use of the funds."

Section 8. Section 7-6-2342, MCA, is amended to read:

"7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-2341 and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting (the time and place of which all the commissioners shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet the emergency.

(2) The board shall publish the resolution, together with a notice *as provided in [section 1]* that a public hearing will be held on the resolution.

(3) Any taxpayer or resident of the county may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the commissioners approve the emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse."

Section 9. Section 7-6-2605, MCA, is amended to read:

"7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer must give notice *as provided in [section 1]* that he is ready to pay such warrants.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail but give notice only that county warrants presented for payment prior to such date, stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

(3) Such warrants cease to draw interest from the first publication or posting of such notice.

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(4) (a) If such warrants be not re-presented for payment within 60 days from the time the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be applied by the treasurer to the payment of unpaid warrants next in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated."

Section 10. Section 7-8-101, MCA, is amended to read:

"7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication *as provided in [section 1]*, shall have power to sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county shall have power to trade with or purchase from any city, town, or political subdivision such property without an appraisal of the property traded or purchased.

(b) A city or town shall have power to trade with or purchase from any county or political subdivision such property without an appraisal of the property traded or purchased."

Section 11. Section 7-8-2212, MCA, is amended to read:

"7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if the real or personal property sought to be sold is reasonably of a value in excess of $2,500, the sale shall be at public auction at the courthouse door after previous notice given by publication *as provided in [section 1]*."

Section 12. Section 7-8-2216, MCA, is amended to read:

"7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not

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necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $2,500, notice of the sale shall be given by publication *as provided in [section 1]*."

Section 13. Section 7-8-2302, MCA, is amended to read:

"**7-8-2302. Notice of sale of tax-deed lands.** (1) *Notice* of the sale provided for in 7-8-2301 shall be given by publication *as provided in [section 1]* and shall *also* be posted in at least three public places in the county.

(2) Posted and published notice shall be signed by the county clerk, and one notice may include a list of all lands to be sold, the appraised value of the same, and the time and place of sale. The fair market value as determined under 7-8-2301 shall be stated in the notice of sale."

Section 14. Section 7-8-2511, MCA, is amended to read:

"**7-8-2511. Procedure for sale of county lands.** (1) The board shall make an order for public auction of any lands classified for sale. Such sale shall be held at the front door of the county courthouse.

(2) Notice of the sale shall be given by publishing notice *as provided in [section 1]*. The *notice* shall describe the land to be sold and the appraised value thereof.

(3) No sale may be made for less than the appraised value of the land, as fixed by the board. The sale shall be for cash or on such terms as the board may approve provided at least 20% of the purchase price shall be paid in cash.

(4) The lessee, permittee, or licensee of any of the lands then subject to a lease, permit, or license shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale."

Section 15. Section 7-11-228, MCA, is amended to read:

"**7-11-228. Public hearings on proposed program — notice.** Notice of hearings shall be published *as provided in [section 1]*."

Section 16. Section 7-12-2105, MCA, is amended to read:

"**7-12-2105. Notice of resolution of intention to create district — hearing.** (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners must *publish* notice of the passage of such resolution of intention *as provided in [section 1]*.

(2) The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed *as provided in [section 2]* to every person, firm, or corporation or the agent of such person, firm, or corporation owning real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes.

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(3) Such notice must describe the general character of the improvement or improvements so proposed to be made or acquired by purchase, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement."

Section 17. Section 7-12-2159, MCA, is amended to read:

"7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be published *as provided in [section 1].*

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the *second* publication of the notice."

Section 18. Section 7-13-145, MCA, is amended to read:

"7-13-145. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners will hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing *must* be given by the commissioners by publication *as provided in [section 1], and* notice *must* also be posted in three public places within the district."

Section 19. Section 7-13-208, MCA, is amended to read:

"7-13-208. Notice of resolutions of intention and concurrence — hearing. (1) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and proposed fees to be charged for the service, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice shall be published *as provided in [section 1]* and *shall also be* posted in three public places within the boundaries of the proposed district.

(3) A copy *of the notice* shall be mailed *as provided in [section 2]* to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published."

Section 20. Section 7-13-2205, MCA, is amended to read:

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"7-13-2205. Notice of petition — hearing required. (1) The text of the petition referred to in 7-13-2204 shall be published *as provided in [section 1]* in every county in which said territory lies.

(2) When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated."

Section 21. Section 7-13-2304, MCA, is amended to read:

"7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof.

(2) Such notice shall be given:

(a) by posting notice thereof in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice *as provided in [section 1]*; and

(c) by forwarding, by mail *as provided in [section 2]* at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners and the purchasers under contracts for deed of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district."

Section 22. Section 7-13-2345, MCA, is amended to read:

"7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of such petition with the secretary of the district, he shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of such petition to be published *as provided in [section 1]*. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district.

(2) Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing shall be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district."

Section 23. Section 7-13-2506, MCA, is amended to read:

"7-13-2506. Notice of petition and hearing. Upon receipt of a duly certified petition, the board of county commissioners shall cause the text

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of the petition to be published *as provided in [section 1]*. If any portion of the proposed district lies in another county, the petition and notice shall likewise be published in that county. No more than five names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated."

Section 24. Section 7-14-2706, MCA, is amended to read:

"7-14-2706. Notice of meeting. The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be published *as provided in [section 1]*. The notice shall state in general terms the kind of construction or improvement sought and the place of beginning, intermediate points, and termination."

Section 25. Section 7-14-2739, MCA, is amended to read:

"7-14-2739. Notice of preparation of assessment roll. As soon as the assessment roll is reported and filed, the board shall publish notice *as provided in [section 1]*. The notice shall notify all persons interested that the assessment roll has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections."

Section 26. Section 7-14-4630, MCA, is amended to read:

"7-14-4630. Notice for bids to lease parking facility. (1) The notice required by 7-14-4629(1) shall consist of the publication of a notice *as provided in [section 1]* inviting bids.

(2) Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased, and the minimum rental to be paid under such lease."

Section 27. Section 7-15-2103, MCA, is amended to read:

"7-15-2103. Notice of hearing on petition. The notice required by 7-15-2102 shall be given at the county's expense by publishing a notice *as provided in [section 1]*."

Section 28. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

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(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice *as provided in [section 1]* of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 for cash received in lieu of dedication."

Section 29. Section 7-21-3422, MCA, is amended to read:

"7-21-3422. Notice of intention to create fair district — hearing. Notice of the resolution of intent to create a fair district shall be published *as provided in [section 1], stating that* a hearing shall be had on the resolution by the taxpayers and residents of the county and *that* objections will be heard."

Section 30. Section 7-22-2212, MCA, is amended to read:

"7-22-2212. Notice of hearing. Upon setting a date for the hearing, the governing body shall give notice of the hearing in the following manner:

(1) notice is to be sent by certified mail to each owner of land within the proposed district at the last-known address as shown in the county records;

(2) notice is to be posted in at least three public places within the proposed district; and

(3) notice is to be published *as provided in [section 1]*."

Section 31. Section 7-22-2406, MCA, is amended to read:

"7-22-2406. Notice of hearing on petition to create district. (1) *The* commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed *as provided in [section 2]* to each nonresident owner and purchaser under contract for deed of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in another county, notice must be posted in each county but posting need not be in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and the methods of objection by publication *as*

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provided in [section 1], in each county if the district is partly in one county and partly in another county."

Section 32. Section 7-22-2446, MCA, is amended to read:

"7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall cause notice thereof to be mailed *as provided in [section 2]* to all nonresident property owners and purchasers under contracts for deed within the district whose addresses are known, to be posted in at least three public places within the district, and to be published *as provided in [section 1]*. Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in each county."

Section 33. Section 7-33-2102, MCA, is amended to read:

"7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing thereof at least 10 days prior to the hearing:

(1) by mailing a copy of the notice *as provided in [section 2]* to each freeholder in the district at the address shown in the assessment roll;

(2) by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district; and

(3) by publishing the notice *as provided in [section 1]*."

Section 34. Section 7-34-2107, MCA, is amended to read:

"7-34-2107. Notice of hearing. A notice of the hearing required by 7-34-2106 shall be published *as provided in [section 1]*."

Section 35. Section 7-34-2153, MCA, is amended to read:

"7-34-2153. Hearing on petition for annexation — notice. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published *as provided in [section 1]* prior to the date fixed by said board for the hearing of said petition, which date shall be not less than 4 weeks after the filing of such petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district."

Section 36. Section 7-34-2157, MCA, is amended to read:

"7-34-2157. Hearing on petition for withdrawal — notice. (1) The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition, which time shall not be more than 4 weeks after the receipt thereof.

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(2) Any interested person may appear at said hearing and present objections to the withdrawal of said portion from said district.

(3) The board shall publish a notice of such hearing *as provided in [section 1]*."

Section 37. Section 7-34-2162, MCA, is amended to read:

"**7-34-2162. Hearing on petition for dissolution — notice.** Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three separate public places within said district for at least 2 weeks prior to the hearing. The notice shall also be published *as provided in [section 1]*."

Section 38. Section 7-35-2102, MCA, is amended to read:

"**7-35-2102. Notice of hearing on creation of district.** (1) The board of county commissioners shall cause notice to be given of the time and place of said hearing by publication as *provided in [section 1]*.

(2) Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said petition, may appear before said board at the hearing and show cause why the district should not be created or the proposed boundaries changed."

Section 39. Section 7-35-2115, MCA, is amended to read:

"**7-35-2115. Notice and hearing on alteration of boundaries.** (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published *as provided in [section 1]*.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

(3) Said board shall have the power, by order entered on its minutes, to grant said petition either in whole or in part and to alter the boundaries of said public cemetery district and to annex thereto all or such portion of said territory described in said petition as will be benefited thereby."

Section 40. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to sections 1 and 2.

Section 41. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 4, 1985.

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CHAPTER NO. 350

[SB 188]

AN ACT TO CLARIFY THE MANNER IN WHICH BENEFITS ARE PAID TO A POLICE OFFICER'S SURVIVING SPOUSE OR DEPENDENT CHILD UNDER THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-9-104, 19-9-804, 19-9-903, AND 19-9-911, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(6) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(7) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(8) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.

(11) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

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(12) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(13) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(14) "Member's annuity" means monthly payments for life derived from member contributions.

(15) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(16) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(17) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(18) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(19) "Plan" means the municipal police officers' retirement system created by this chapter.

(20) "Police officer" means a law enforcement officer employed by an employer.

(21) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(22) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(23) "Retirement allowance" means the employer annuity plus the member's annuity.

(24) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

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(25) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(26) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 2. Section 19-9-804, MCA, is amended to read:

"19-9-804. Amount of service retirement allowance — continuation of allowance after death of member. (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer or who is retired under 19-9-801(3) prior to reaching 20 years of service shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary.

(3) *Upon the death of a police officer receiving a service retirement allowance under this section, his surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent.*"

Section 3. Section 19-9-903, MCA, is amended to read:

"19-9-903. Amount of disability retirement allowance — continuation of allowance after death of member. (1) A police officer who is eligible under 19-9-902 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

(2) A police officer who is retired under 19-9-902 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but had elected to serve additional years and was then serving such additional years shall be paid for the additional years at the rate prescribed in 19-9-804(2).

(3) Upon the death of a police officer receiving a disability allowance under this section, his surviving spouse or dependent child is eligible for benefits as provided in 19-9-804(3)."

Section 4. Section 19-9-911, MCA, is amended to read:

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"**19-9-911. Death benefits.** Upon the death of a police officer before retirement, his surviving spouse *or dependent child is eligible for benefits as provided in 19-9-804(3).*"

Section 5. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 4, 1985.

CHAPTER NO. 351

[SB 239]

AN ACT REVISING THE LAW ON FUTURE ADVANCES UNDER A MORTGAGE; AUTHORIZING THE USE OF MORTGAGES TO SECURE A LINE OF CREDIT WITH VARYING BALANCES; AMENDING SECTION 71-1-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-206, MCA, is amended to read:

"**71-1-206. Future advances.** (1) The amount of future advances *or total indebtedness that may be outstanding at any given time* and subject to mortgage protection must be stated in the mortgage. *The* mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part *of a future advance. The total amount of indebtedness that may be secured by the mortgage may decrease or increase from time to time, but the total principal amount of the obligations secured at any one time may not exceed the face amount stated in the mortgage together with interest as provided in the instrument secured by the mortgage.*

(2) The lien for *the* stated amount of future advances *or total indebtedness* shall, *notwithstanding the fact that from time to time during the term of the mortgage no indebtedness is due from the mortgagor to the mortgagee,* have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. *The lien extends to interest as provided in the instrument secured by the mortgage.*

(3) The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto, and the principal amount of the original indebtedness and the limit

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placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges as evidenced by the original loan-contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. *The mortgagor retains the right to demand satisfaction of the mortgage at any time the balance is zero.*"

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 4, 1985.

CHAPTER NO. 352

[SB 242]

AN ACT TRANSFERRING FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE THE FUNCTIONS RELATING TO THE STATE BUILDING CODES; AMENDING SECTIONS 20-6-621, 20-6-622, 50-3-103, 50-60-101, 50-60-504, 50-60-505, 50-60-507 THROUGH 50-60-514, 50-60-603 THROUGH 50-60-607, AND 50-64-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites, approval election, and lease of state lands.** (1) The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes, but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election shall be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of such site.

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(3) Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of health and environmental sciences of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of *commerce*.

(4) The board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in such district."

Section 2. Section 20-6-622, MCA, is amended to read:

"20-6-622. Review and approval of school building plans and specifications. (1) No school building, either publicly or privately owned or operated, in which students are housed or instructed may be built, enlarged, or remodeled until the plans and specifications for such construction have been submitted to and approved by the department of *commerce* or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization."

Section 3. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by state fire marshal. (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of *commerce* and filing with the secretary of state.

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(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor."

Section 4. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of *commerce* provided for in Title 2, chapter 15, part *18*.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

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(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(12) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(13) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 5. Section 50-60-504, MCA, is amended to read:

"50-60-504. Department to prescribe minimum standards. The department of *commerce* shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503."

Section 6. Section 50-60-505, MCA, is amended to read:

"50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of *commerce.*

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit."

Section 7. Section 50-60-507, MCA, is amended to read:

"50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of *commerce* or *its* authorized representative. He shall give

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a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department."

Section 8. Section 50-60-508, MCA, is amended to read:

"50-60-508. Permit fees. (1) The department of *commerce* shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved."

Section 9. Section 50-60-509, MCA, is amended to read:

"50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of *commerce* or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged."

Section 10. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspection by department to insure compliance. All plumbing and drainage systems may be inspected by the department of *commerce* or its authorized representative to insure compliance with the requirements of the state plumbing code."

Section 11. Section 50-60-511, MCA, is amended to read:

"50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of *commerce*, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

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(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code."

Section 12. Section 50-60-512, MCA, is amended to read:

"50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of *commerce* or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work."

Section 13. Section 50-60-513, MCA, is amended to read:

"50-60-513. Suspension or revocation of permit. The department of *commerce* may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69."

Section 14. Section 50-60-514, MCA, is amended to read:

"50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of *commerce*, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code."

Section 15. Section 50-60-603, MCA, is amended to read:

"50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of *commerce*.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department."

Section 16. Section 50-60-604, MCA, is amended to read:

"50-60-604. Department to make inspections, issue inspection tags, and establish fees. The department of *commerce* shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection."

Section 17. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless

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the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of *commerce*."

Section 18. Section 50-60-606, MCA, is amended to read:

"**50-60-606. Power supplier to deliver inspection tag to department after installation energized.** Immediately after an installation has been energized, the power supplier shall deliver to the department of *commerce* the inspection tag covering the installation."

Section 19. Section 50-60-607, MCA, is amended to read:

"**50-60-607. Unlawful acts.** It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of *commerce*."

Section 20. Section 50-64-102, MCA, is amended to read:

"**50-64-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means the department of *commerce*.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity."

Section 21. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 22. **Effective date.** This act is effective July 1, 1985.

Approved April 4, 1985.

CHAPTER NO. 353

[SB 246]

AN ACT REQUIRING INCOME FROM STATE LANDS NOT HELD IN TRUST TO BE CREDITED TO THE GENERAL FUND UNLESS OTHER DISPOSITION IS PROVIDED BY LAW; AMENDING SECTION 77-3-436, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-436, MCA, is amended to read:

"**77-3-436. Disposition of royalties and other money.** All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

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(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund *unless other disposition is provided by law.*"

Section 2. **Extension of authority.** Any existing authority of the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 4, 1985.

CHAPTER NO. 354

[SB 259]

AN ACT REMOVING THE REQUIREMENT THAT THE STATE PRISON RANCH REPAY GENERAL FUND LOANS BY THE END OF THE FISCAL YEAR; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"**17-2-107. Accurate accounting records and interaccount loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. The loan must be repaid before the end of the fiscal

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year unless it is extended under the criteria of subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds;

(iii) receipts due to the loan fund; *or*

(iv) receipts from the sale of state prison ranch products.

(4) These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved. Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(5) Any loan from the general fund or the university current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(6) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102."

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Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved April 4, 1985.

CHAPTER NO. 355

[SB 278]

AN ACT AUTHORIZING THE CITY POLICE TO DISPOSE OF ABANDONED VEHICLES SEIZED ON CITY STREETS; AMENDING SECTIONS 61-12-402 THROUGH 61-12-405 AND 61-12-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, *the highway patrol* shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, preservation, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff *or the city police* shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle *taken into custody under 61-12-401.* If such name and address are ascertained, the sheriff *or the city police* shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the division of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division, return receipt requested and postage prepaid thereon, is mailed at least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

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(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff *or the city police* a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff *or the city police* proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff *or the city police*. In the release the sheriff *or the city police* shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff *or the city police* under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Section 2. Section 61-12-403, MCA, is amended to read:

"61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county *or the city police of the city* in which the vehicle was located at the time it was taken into custody satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation, and custody of the vehicle. He shall not be required to pay storage charges for a period longer than 90 days."

Section 3. Section 61-12-404, MCA, is amended to read:

"61-12-404. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in 61-12-403 within 30 days after notification by registered or certified mail or prescribed publication, the sheriff of the county *or the city police of the city* in which it is located at the time it was taken into custody shall sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle."

Section 4. Section 61-12-405, MCA, is amended to read:

"61-12-405. Certificate of sale. (1) When any vehicle is so sold, the sheriff *or the city police* at the time of the payment of the purchase price shall execute a certificate of sale in duplicate *and* shall deliver the original certificate to the purchaser and retain the copy.

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(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle."

Section 5. Section 61-12-407, MCA, is amended to read:

"61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404 the sheriff *or the city police* shall transmit to the division and to the county treasurer *or to the city treasurer, respectively,* a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer *or the city police shall transmit to the city treasurer* the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance *from:*

(a) the county sheriff, the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; *or*

(b) the city police, the city treasurer shall *file the return in his office and* deposit *the balance* in the city street fund *on all vehicles seized by the city police.*"

Approved April 4, 1985.

CHAPTER NO. 356

[SB 294]

AN ACT TO ELIMINATE THE SPOUSAL EXEMPTION IN THE CRIMINAL OFFENSE OF SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTION 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. *A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(2)(c).*

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more

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than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (5).

(7) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim."

Approved April 4, 1985.

CHAPTER NO. 357

[SB 307]

AN ACT TO CLARIFY THE JURISDICTION AND THE AUTHORITY OF THE COUNTY TAX APPEAL BOARDS AND THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-1-303, 15-10-304, AND 15-23-104, MCA; AND REPEALING SECTION 15-8-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-303, MCA, is amended to read:

"15-1-303. Penalty for refusal to furnish information. (1) If any person shall refuse inspection of any books or records when requested by the department or its authorized agent or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable and may add to its assessment thus made not more than 20% thereof as a penalty for such

refusal or neglect. The department shall immediately notify the person so assessed of its action, either by certified or registered mail or by personal service of such notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, or by April 1, whichever is later, he may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of his failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of his failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, he may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of his failure to supply the information which the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 20 days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board must follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

Section 2. Section 15-10-304, MCA, is amended to read:

"15-10-304. County clerk and recorder to follow directions of department, county or state tax appeal boards. As soon as the county clerk and recorder receives from the department of revenue, county or state tax appeal board a statement of any change or changes made by the department or board in the assessment books of the county or in any assessment therein contained, he must make the corresponding change or changes in the assessment books by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum when more than 50 cents as $1 and omitting it when less than

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50 cents so that the value of any separate assessment shall contain no fractions of a dollar; provided, however, that if such assessment books are not in the possession of the county clerk and recorder at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided."

Section 3. Section 15-23-104, MCA, is amended to read:

"15-23-104. Failure to file — estimate by department — penalty. If any person fails to file a report or return within the time established in 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. *In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303.* In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment *pursuant to parts 5 through 8 of this chapter* based on estimated value *or imputed value* is subject to review under 15-8-601. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent."

Section 4. **Repealer.** Section 15-8-305, MCA, is repealed.

Approved April 4, 1985.

CHAPTER NO. 358

[SB 333]

AN ACT TO ALLOW A CREDITOR OR SECURED PARTY TO RECORD A LIEN OR SECURITY INTEREST AND TRANSFER TITLE IF THE OWNER HAS NOT TRANSFERRED TITLE AND REGISTERED THE VEHICLE WITHIN THE STATUTORY 20-DAY GRACE PERIOD; AMENDING SECTIONS 61-3-103, 61-3-201, AND 61-3-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-103, MCA, is amended to read:

"61-3-103. Filing of security interests, rights, procedure, fees. (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless the security agreement or other lien instrument that creates the security interest or a true

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copy thereof certified by a notary public has been filed with the division as provided in this section. The division shall not file any security agreement or other lien instrument unless it is accompanied by the certificate of ownership of the vehicle encumbered, except in the sale of a new motor vehicle by a duly licensed dealer. The division shall file the security agreement, lien instrument, or its certified copy by entering upon its records the name and address of the secured party together with the amount of the security interest and, except as provided in subsection (2), shall endorse the same information upon the face of the certificate of ownership. The division shall mail a statement certifying to the filing of a security agreement or lien instrument to the secured party. *The division shall* mail the certificate of ownership to the owner at the address given on the certificate*; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the division shall return the certificate of ownership to the county treasurer where the vehicle is to be registered.* The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate.

(3) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed. Security agreements and other lien instruments filed with the division, and all renewals and assignments thereof, shall be retained by it for a period of 8 years after the maturity date stated in the security agreement, lien instrument, or renewal, or if no maturity date is therein stated, for a period of 13 years after receipt, after which they may be destroyed.

(4) The filing of a security agreement or other lien instrument or copy thereof, as herein provided, perfects a security interest which has attached under the document filed. Filing of a security agreement or other lien instrument constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest created by the document filed.

(5) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the division.

(6) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the division the sum of $1 for each day thereafter that he fails to file such satisfaction.

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(7) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the division shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(8) It shall not be necessary to refile with the division any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(9) A fee of $3 shall be paid to the division to file any security agreement or other lien instrument against a motor vehicle. The $3 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the division and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $3 shall be paid the division for issuing a certified copy of a security agreement or other lien instrument on file in the office of the division, or for filing an assignment of any instrument on file with the division. All fees provided for in this section shall be deposited by the division in the motor vehicle recording account of the state special revenue fund."

Section 2. Section 61-3-201, MCA, is amended to read:

"61-3-201. Transfer of interest. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of the certificate, and his signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the endorsed certificate of ownership and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the division. No certificate of ownership or certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. *If the transferee has not made application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The division shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the division to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.*

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(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the division an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of such interest. The statement shall set forth the reason for the involuntary transfer, the interest so transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting such transfer, and other information requested by the division. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with the statement. If the division is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and thereafter, but not less than 5 days thereafter, shall issue a new certificate of ownership and certificate of registration to the person entitled thereto. The notice herein required is complied with by deposit in the post office in Deer Lodge, Montana, such notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration but the division need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) (a) In the event of the death of the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered hereunder and not exceeding a combined value of $15,000 without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving spouse or other heir unless such property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the division setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer.

(c) The division is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) shall prevent any secured party from assigning his interest in a motor vehicle registered under the provisions of

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this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of such assignment must be filed with the division and record thereof made upon its records.

(7) The certificates of ownership shall remain valid until canceled by the division upon a transfer of any interest shown therein and need not be renewed annually."

Section 3. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of ownership — issuance — contents — joint ownership. (1) Upon completion of the application for certificate of ownership, on forms furnished by the division, the county treasurer shall forward one copy of the application to the division, which shall enter the information contained in the application upon the corresponding records of its office and, *except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties,* shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and complete address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103(2), the name and complete address of any holder of a perfected security interest in the registered vehicle;

(d) a description of the registered vehicle, including the year built and serial number;

(e) except as provided in 61-3-103(2), the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the division.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the division shall recheck the application. If there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the division.

(5) The certificate of ownership shall contain a notice to the division of a transfer of interest of the owner and such other statements as may be determined by the division."

Section 4. **Extension of authority.** Any existing authority of the department of justice, division of motor vehicles, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 4, 1985.

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CHAPTER NO. 359

[SB 341]

AN ACT AUTHORIZING CHANGES IN WORKING HOURS OF MONTANA STATE PRISON EMPLOYEES; REPEALING SECTION 53-30-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 53-30-103, MCA, is repealed.

Approved April 4, 1985.

CHAPTER NO. 360

[SB 362]

AN ACT TO RAISE THE STATE MINIMUM WAGE TO $3.05 AN HOUR EFFECTIVE OCTOBER 1, 1985, AND TO $3.35 AN HOUR EFFECTIVE OCTOBER 1, 1986, AND THEREAFTER; AMENDING SECTION 39-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-404, MCA, is amended to read:

"**39-3-404. Minimum wage.** (1) Except as otherwise provided *in* this part *and except for farm workers as provided in subsection (2)*, every employer shall pay to each of his employees:

(a) *at least $3.05 an hour after September 30, 1985, and before October 1, 1986;*

(b) *at least $3.35 an hour on October 1, 1986, and thereafter.*

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

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(i) $575 a month for the first year from July 1, 1981;

(ii) $635 a month for the second year from July 1, 1981, and thereafter."

Section 2. **Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 4, 1985.

CHAPTER NO. 361

[SB 387]

AN ACT TO ALLOW POLICE AND EMERGENCY VEHICLES TO CARRY A PORTABLE GREEN SIGNAL LIGHT FOR PURPOSES OF DESIGNATION AS THE ON-SCENE COMMAND AND CONTROL VEHICLE IN AN EMERGENCY OR DISASTER; AMENDING SECTION 61-9-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police and emergency vehicles and on-scene command vehicles. (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

(4) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights shall have sufficient intensity to be

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visible at 500 feet in normal sunlight. The warning lights shall be of a type and located on each bus as prescribed by the state board of education and approved by the division.

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(6) Blue, red, and amber lights required in subsections (1), (2), and (3) of this section shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or as an alternative, one rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The use of blue lights as required in subsection (1) of this section shall be restricted to police vehicles as defined in 61-1-118.

(7) Every police car and authorized emergency vehicle may be equipped with a portable signal lamp that is green in color and capable of magnetic attachment to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light shall have sufficient intensity to be visible at 500 feet in normal sunlight."

Approved April 4, 1985.

CHAPTER NO. 362

[SB 414]

AN ACT PROVIDING FOR THE APPOINTMENT OF THE PUBLIC ADMINISTRATOR OR A CONSERVATOR CORPORATION AS CONSERVATOR OF CERTAIN PERSONS; AMENDING SECTIONS 7-4-3004, 72-5-408, 72-5-410, AND 72-15-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Professional person to notify public administrator of need for conservator.** Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of his property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person must notify the public administrator.

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Section 2. **Public administrator to file for conservator.** Whenever the public administrator is notified under [section 1] of the need for the appointment of a conservator and reasonable cause exists, he must file a petition for appointment of the public administrator as conservator of the person.

Section 3. Section 7-4-3004, MCA, is amended to read:

"7-4-3004. Office of public administrator. The powers and duties of the public administrator are defined by Title 72, chapter ..., *and [section 2]*."

Section 4. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may *or, in the case of an appointment pursuant to 72-5-410(1)(h), shall* direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

Section 5. Section 72-5-410, MCA, is amended to read:

"72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

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(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority."

Section 6. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. *(1)* The public administrator shall receive and collect for his own use as full compensation for his services *under this chapter*, including attorney's fees, the amounts provided for in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from his estate to be paid to the public administrator as full compensation for his services, excluding court costs and attorney's fees. The total sum deducted as compensation for the public administrator may not exceed 2 ½% of the annual periodic payments or $100, whichever is less."

Section 7. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 72, chapter 5, part 4, and the provisions of Title 72, chapter 5, part 4, apply to sections 1 and 2.

Approved April 4, 1985.

CHAPTER NO. 363

[SB 454]

AN ACT ENABLING COUNTY HOUSING AUTHORITIES AND COUNTY GOVERNING BODIES TO ASSIST IN THE PROVISION AND REHABILITATION OF RURAL DWELLINGS FOR ANY LOW-INCOME RESIDENT; AMENDING SECTIONS 7-15-2121 AND 7-15-2122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-2121, MCA, is amended to read:

"7-15-2121. Authorization for rural housing projects. Housing authorities created for counties are specifically empowered and authorized

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to borrow money, accept grants, and exercise their other powers to provide housing for *rural residents* of low income."

Section 2. Section 7-15-2122, MCA, is amended to read:

"**7-15-2122. Operation of rural housing projects.** (1) In connection with the projects authorized by 7-15-2121, such housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of such projects to or for *rural residents* of low income as such housing authority deems necessary in order to assure the achievement of the objectives of this part.

(2) Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of lands described in any such instrument. The covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

(3) Nothing contained in this section and 7-15-2121 shall be construed as limiting any other powers of any housing authority, except that no more than 2 acres of land per dwelling, together with the dwelling houses thereon provided for under the provisions of this part, shall be exempt from taxation and that upon title to said 2 acres of land and the dwelling houses thereon passing to private ownership, the said land and the dwelling houses thereon shall be restored to the tax rolls and be subject to taxation."

Section 3. **Authorization for counties to furnish assistance in the rehabilitation of private dwellings.** If it has determined that unsanitary or unsafe privately owned dwellings exist in the unincorporated area of the county and it has further determined that the owners of such dwellings are unable under the prevailing market conditions to finance replacement or rehabilitation of their dwellings without assistance, the board of county commissioners may:

(1) using the funds provided in (2), finance the replacement or rehabilitation of such unsanitary or unsafe privately owned dwellings through the use of grants of funds or property, direct loans, loan guarantees, and any other means;

(2) accept gifts of property or apply for and accept grants, contributions, and any other form of financial assistance from the federal government or the state or other public body or from any other public or private source for the purposes of this section and 7-15-2101; and

(3) enter into and carry out contracts in connection with activities under subsection (1) or (2).

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 7, chapter 15, part 21, and the provisions of 7-15-2101 apply to section 3.

Approved April 4, 1985.

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CHAPTER NO. 364

[SB 464]

AN ACT TO EXCLUDE CERTAIN DISABILITY BENEFITS FROM ADJUSTED GROSS INCOME IN COMPUTING STATE INCOME TAX LIABILITY; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

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(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical

or mental impairment lasting or expected to last at least 12 months. **(Subsection (2)(l) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"**

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983.

Approved April 4, 1985.

CHAPTER NO. 365

[HB 840]

AN ACT PROVIDING THAT AN OIL, GAS, OR OTHER MINERAL LESSEE MUST REMOVE FROM COUNTY RECORDS ANY LEASE THAT IS CANCELED OR EXPIRED; PROVIDING A CRIMINAL PENALTY FOR FAILING TO REMOVE A FORFEITED, CANCELED, OR EXPIRED LEASE; AMENDING SECTIONS 45-2-311 AND 82-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-201, MCA, is amended to read:

"82-1-201. Release of record upon forfeiture of lease — penalty. *(1)* When any oil, gas, or other mineral lease heretofore or hereafter executed *and recorded is* forfeited, *canceled, or expires,* it shall be the duty of the lessee, his successor, or assigns, within 60 days from the date of *such* forfeiture, *cancellation, or expiration* of any and all leases, to have such lease or abstract of such lease released from record in the county where the leased land is situated without cost to the owner thereof.

(2) A lessee who fails to comply with subsection (1) within 30 days of written notice from the lessor is guilty of a misdemeanor punishable by a fine of up to $250."

Section 2. Section 45-2-311, MCA, is amended to read:

"45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, *82-1-201,* or 82-10-104 or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of

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the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity."

Approved April 4, 1985.

CHAPTER NO. 366

[SB 327]

AN ACT PROVIDING THAT WHENEVER A VEHICLE IS ESTABLISHED TO HAVE BEEN IN VIOLATION OF THE LAW PROHIBITING THE PASSING OF A STOPPED SCHOOL BUS, THE REGISTERED OWNER OF THE VEHICLE IS PRIMA FACIE RESPONSIBLE FOR THE VIOLATION; PROVIDING A PENALTY FOR THE VIOLATION; AMENDING SECTION 61-8-351, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-351, MCA, is amended to read:

"61-8-351. Meeting or passing school bus — identification of violator — penalty. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway or street for the purpose of receiving or discharging any school children shall stop the vehicle not less than 10 feet before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in 61-9-402 and said driver shall not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street on which they live and until such school bus resumes motion or the driver has signaled traffic to proceed. In addition

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the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway or street for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in 61-9-402.

(2) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights shall be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town for the purpose of receiving or discharging school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site for purposes of receiving or discharging school children and such receipt or discharge does not involve street crossing by the children; and such lights may not be operated in violation of such a policy.

(3) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(4) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(5) Whenever a vehicle is established to have been in violation of subsection (1) and the identity of the driver of said vehicle cannot be established, the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

(6) Violation of subsection (1) is punishable upon conviction by a fine of not more than $500."

Approved April 5, 1985.

CHAPTER NO. 367

[SB 314]

AN ACT TO PROVIDE THAT FAILURE TO REPORT KNOWN CHILD ABUSE OR NEGLECT IS A MISDEMEANOR; AMENDING SECTION 41-3-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-207, MCA, is amended to read:

"**41-3-207. Penalty for failure to report.** Any person, official, or institution required by law to report known or suspected child abuse or

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neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention. *Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.*"

Approved April 8, 1985.

CHAPTER NO. 368

[HB 214]

AN ACT PROVIDING FOR THE REGISTRATION OF SPEECH PATHOLOGY AIDES AND AUDIOLOGY AIDES; PROVIDING FOR ANNUAL REGISTRATION FEES; CHANGING THE LICENSE RENEWAL DATE; AMENDING SECTIONS 37-15-307, 37-15-308, AND 37-15-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-307, MCA, is amended to read:

"**37-15-307. Application and examination fee — license fee — registration fee.** The amount of fees prescribed in connection with a license as a speech pathologist or audiologist *and with registration as a speech pathology aide or audiology aide* shall be determined by the board each year based on costs and predicted expenditures."

Section 2. Section 37-15-308, MCA, is amended to read:

"**37-15-308. Renewal.** (1) Each licensed speech pathologist or audiologist shall on or before *October* 31 of *each* year pay to the board the fee for the renewal of his license.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

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(6) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew his license within the 4 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter."

Section 3. Section 37-15-312, MCA, is amended to read:

"37-15-312. Department to publish list of licensees and registrants. Each year the department shall publish a list of all persons licensed *and registered* under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request."

Section 4. **Registration of aides.** Each licensed speech pathologist and audiologist shall annually, on or before October 31, register with a board on forms provided by the board all speech pathology aides and audiology aides working directly under the supervision of the licensee.

Section 5. **Extension of authority.** Any existing authority of the board of speech pathologists and audiologists to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 37, chapter 15, and the provisions of Title 37, chapter 15, apply to section 4.

Section 7. **Effective date.** This act is effective July 1, 1985.

Approved April 8, 1985.

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CHAPTER NO. 369

[HB 228]

AN ACT AUTHORIZING THE PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS; PROVIDING METHODS FOR REVOCATION OF THE DECLARATION; LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION AND FOR OTHER RELATED VIOLATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 11] may be cited as the "Montana Living Will Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a document executed in accordance with the requirements of [section 3].

(3) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(4) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(5) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

(6) "Qualified patient" means a patient who has executed a declaration in accordance with [this act] and who has been determined by the attending physician to be in a terminal condition.

(7) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

Section 3. **Declaration relating to use of life-sustaining procedures.** (1) Any competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. However, the declaration is effective only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment

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decisions. The declaration must be signed by the declarant, or another at the declarant's direction, in the presence of two witnesses. A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with [this act] and is valid.

(2) It is the responsibility of the declarant to notify his physician of the declaration. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(3) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain. It is my intention that this declaration shall be valid until revoked by me.

Signed this_____day of_____, _____.

Signature_____
City, County, and State of Residence_____

The declarant is known to me and voluntarily signed this document in my presence.

Witness_____
Address_____
Witness_____
Address_____

Section 4. **Revocation of declaration.** (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record.

Section 5. **Recording determination of terminal condition and content of declaration.** When an attending physician who has been notified of the existence and content of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the content of the declaration in the declarant's medical record.

Section 6. **Treatment of qualified patients.** (1) A qualified patient has the right to make decisions regarding use of life-sustaining procedures

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if the patient is able to do so. If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures.

(2) [This act] does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or to alleviate pain.

(3) The declaration of a qualified patient known to the attending physician to be pregnant must be given no effect if it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

Section 7. **Transfer of patients.** (1) An attending physician who is unwilling to comply with the requirements of [section 5] or who is unwilling to comply with the declaration of a qualified patient in accordance with [section 6] shall take all reasonable steps to transfer the declarant to another physician.

(2) If the policies of a health care facility preclude compliance with the declaration of a qualified patient under [this act], that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of [this act] can be carried out.

Section 8. **Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of [this act], are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) the health care facility in which the withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under [this act] that are in accord with reasonable medical standards.

Section 9. **Penalties.** (1) A physician who willfully fails to transfer in accordance with [section 7] is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician who willfully fails to record the determination of terminal condition in accordance with [section 5] is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

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(4) A person who falsifies or forges the declaration of another or purposely conceals or withholds personal knowledge of a revocation as provided in [section 4], with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

Section 10. **Reservations on effect of [act].** (1) Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration and in accordance with [this act] is not, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to [section 3] does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may require any person to execute a declaration as a condition for being insured for or receiving health care services.

(4) [This act] creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

(5) Nothing in [this act] increases or decreases the right of a patient to make decisions regarding use of life-sustaining procedures if the patient is able to do so or impairs or supersedes any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of [this act] are cumulative.

(6) [This act] does not authorize or approve mercy killing.

Section 11. **Recognition of declarations executed in other states.** A declaration executed in a manner substantially similar to [section 3] in another state and in compliance with the law of that state is effective for purposes of [this act].

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 8, 1985.

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CHAPTER NO. 370

[HB 259]

AN ACT PROVIDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WITH RULEMAKING AUTHORITY TO ESTABLISH PENALTIES AND SANCTIONS APPLICABLE TO PROVIDERS OF HEALTH-RELATED SERVICES IN COUNTIES THAT HAVE OPTED FOR STATE ASSUMPTION OF COUNTY WELFARE; PROVIDING THAT SUCH PENALTIES AND SANCTIONS ARE THE SAME AS IN THE MEDICAID PROGRAM; AMENDING SECTION 53-2-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-803, MCA, is amended to read:

"**53-2-803. Authority to adopt rules.** The department may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to the department. The department may adopt rules:

(1) to determine the amount, scope, and duration of general relief, which may not exceed those services and amounts payable under the department's programs of medicaid and aid to families with dependent children as necessary to carry out the purposes of this part*; and*

(2) establishing a system of penalties and sanctions applicable to providers of health-related services to state-assumed counties in accordance with 53-6-111(2) through (5)."

Approved April 8, 1985.

CHAPTER NO. 371

[HB 284]

AN ACT MAKING THE UNEMPLOYMENT TRUST FUND SOLVENT; INCREASING THE TAX ON EMPLOYERS; CHANGING THE METHOD OF COMPUTING THE EXPERIENCE RATING; CHANGING BENEFIT AMOUNTS; PROVIDING FOR DISQUALIFICATION IF AN EMPLOYEE LEAVES WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO HIS EMPLOYMENT; AMENDING SECTIONS 39-51-1108, 39-51-1213, 39-51-1215, 39-51-1218, 39-51-2104, 39-51-2201, AND 39-51-2302, MCA; PROVIDING THAT CERTAIN SECTIONS OF THE ACT ARE RETROACTIVE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Surtax to pay federal advances.** The department shall for each calendar year determine the rate of a surtax to be charged during that year to all employers. The rate of the surtax must be based on federal

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advances that will or have become due in that calendar year. The surtax applies to each employer's total wages paid during that calendar year. The surtax rate for any calendar year may not be more than 0.3% of total wages paid during that calendar year. The surtax must be paid in the same manner as regular contributions.

Section 2. Section 39-51-1108, MCA, is amended to read:

"39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including *the amount specified in this section* by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of *80%* of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act."

Section 3. Section 39-51-1213, MCA, is amended to read:

"39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid *since October 1, 1981,* minus benefits charged on each employer's account *since October 1, 1981,* divided by his average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years *immediately preceding the computation date.* The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of

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each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years."

Section 4. Section 39-51-1215, MCA, is amended to read:

"39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid *since October 1, 1981.* The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account *since October 1, 1981.* Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund."

Section 5. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

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SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	*(.0260)*	*(.0245)*	*(.0225)*	*(.0200)*
Average Tax Rate	*1.4*	*1.6*	*1.8*	*2.0*
Rate Class	Contribution Rates For Eligible Employers			
1	*0.0%*	*0.1%*	*0.3%*	*0.5%*
2	*0.1*	*0.3*	*0.5*	*0.7*
3	*0.3*	*0.5*	*0.7*	*0.9*
4	*0.5*	*0.7*	*0.9*	*1.1*
5	*0.7*	*0.9*	*1.1*	*1.3*
6	*0.9*	*1.1*	*1.3*	*1.5*
7	*1.1*	*1.3*	*1.5*	*1.7*
8	*1.3*	*1.5*	*1.7*	*1.9*
9	*1.5*	*1.7*	*1.9*	*2.1*
10	*1.7*	*1.9*	*2.1*	*2.3*
	Contribution Rates For Unrated Employers			
	2.0%	*2.2%*	*2.4%*	*2.6%*
Rate Class	Contribution Rates For Deficit Employers			
1	*3.2%*	*3.4%*	*3.6%*	*3.8%*
2	*3.4*	*3.6*	*3.8*	*4.0*
3	*3.6*	*3.8*	*4.0*	*4.2*
4	*3.8*	*4.0*	*4.2*	*4.4*
5	*4.0*	*4.2*	*4.4*	*4.6*
6	*4.2*	*4.4*	*4.6*	*4.8*
7	*4.4*	*4.6*	*4.8*	*5.0*
8	*4.6*	*4.8*	*5.0*	*5.2*
9	*4.8*	*5.0*	*5.2*	*5.4*
10	*6.4*	*6.4*	*6.4*	*6.4*

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	*(.0135)*	*(.0095)*	*(.0075)*	(.0050)	(.....)
2.2	*2.4*	*2.6*	*2.8*	*3.0*	*3.2*
Contribution Rates For Eligible Employers					
0.7%	*0.9%*	*1.1%*	*1.3%*	*1.5%*	*1.7%*
0.9	*1.1*	*1.3*	*1.5*	*1.7*	*1.9*
1.1	*1.3*	*1.5*	*1.7*	*1.9*	*2.1*
1.3	*1.5*	*1.7*	*1.9*	*2.1*	*2.3*
1.5	*1.7*	*1.9*	*2.1*	*2.3*	*2.5*
1.7	*1.9*	*2.1*	*2.3*	*2.5*	*2.7*
1.9	*2.1*	*2.3*	*2.5*	*2.7*	*2.9*
2.1	*2.3*	*2.5*	*2.7*	*2.9*	*3.1*
2.3	*2.5*	*2.7*	*2.9*	*3.1*	*3.3*
2.5	*2.7*	*2.9*	*3.1*	*3.3*	*3.5*
Contribution Rates For Unrated Employers					
2.8%	*3.0%*	*3.2%*	*3.4%*	*3.6%*	*3.8%*

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Contribution Rates For Deficit Employers

4.0%	*4.2%*	*4.4%*	*4.6%*	*4.8%*	*5.0%*
4.2	*4.4*	*4.6*	*4.8*	*5.0*	*5.2*
4.4	*4.6*	*4.8*	*5.0*	*5.2*	*5.4*
4.6	*4.8*	*5.0*	*5.2*	*5.4*	*5.6*
4.8	*5.0*	*5.2*	*5.4*	*5.6*	*5.8*
5.0	*5.2*	*5.4*	*5.6*	*5.8*	*6.0*
5.2	*5.4*	*5.6*	*5.8*	*6.0*	*6.2*
5.4	*5.6*	*5.8*	*6.0*	*6.2*	*6.4*
5.6	*5.8*	*6.0*	*6.2*	*6.4*	*6.4*
6.4	*6.4*	*6.4*	*6.4*	*6.4*	*6.4*"

Section 6. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within his benefit year only if the department finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the department may prescribe, except that the department may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may register and report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(4) prior to *the first* week for which he *is paid* benefits he has been totally unemployed for a waiting period of 1 week. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 7. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) *For claims filed before July 7, 1985, an* eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest

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lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. *For claims effective July 7, 1985, and after, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.*

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, *except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984.* Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount."

Section 8. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause *attributable to his employment.*

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment."

Section 9. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 10. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to section 1.

Section 11. **Applicability.** Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985.

Section 12. **Effective dates — termination.** (1) Sections 1 through 5, 9, 11, and this section are effective on passage and approval.

(2) Sections 6 through 8 are effective July 1, 1985.

(3) Section 1 terminates on July 1, 1987.

Approved April 8, 1985.

CHAPTER NO. 372

[HB 342]

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO TRANSFER FUNDS FROM THE LONG-RANGE BUILDING PROGRAM REVENUE SOURCES TO A SPECIAL REVENUE FUND; PROVIDING A DEFINITION OF CAPITAL PROJECT COSTS; AMENDING SECTIONS 17-5-401, 17-5-404, 17-5-801, 17-5-804, AND 18-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-401, MCA, is amended to read:

"17-5-401. Definitions. (1) "Board", "department", and "treasurer" mean the board of examiners, department of administration, and state treasurer, respectively.

(2) "Capital projects fund" means a separate long-range building program fund which is created within the capital projects fund type established in 17-2-102.

(3) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in 18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(4) "Long-range building program" means and includes all buildings, structures, and facilities to be constructed, repaired, used, equipped, or furnished and land to be acquired therefor with the consent of the legislature in accordance with 17-7-202 and 18-2-101 through 18-2-105.

(5) "Long-range building program bonds" means and includes all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this part.

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(6) "Debt service account" means a separate long-range building program fund which is created within the debt service fund type established in 17-2-102."

Section 2. Section 17-5-404, MCA, is amended to read:

"17-5-404. Use of capital projects fund. The capital projects fund shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program. *The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects fund to a special revenue fund.*"

Section 3. Section 17-5-801, MCA, is amended to read:

"17-5-801. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Bond act" means an act approved by the vote of two-thirds of the members of each house of the legislature or by a majority of the electors voting thereon, authorizing the issuance of bonds for the purpose set forth therein and adopting this part by reference.

(3) "Bonds" means general obligation bonds, notes, or other evidences of indebtedness issued in accordance with the provisions of this part.

(4) "Capital projects account" means a separate general obligation bond and note account created within the capital projects fund type established in 17-2-102.

(5) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in 18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(6) "Debt service account" means a separate general obligation bond and note account created within the debt service fund type established in 17-2-102.

(7) "Department" means the department of administration created in 2-15-1001.

(8) "Treasurer" means the ex officio state treasurer, referred to in 2-15-1002."

Section 4. Section 17-5-804, MCA, is amended to read:

"17-5-804. Use of capital projects account. The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts. *The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects account to a special revenue fund.*"

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Section 5. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes:

(a) a building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) a building, facility, or structure at a state institution;

(c) a building, facility, or structure owned or to be owned by a state agency, including the department of highways;

(2) "building" does not include:

(a) a building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) a facility or structure used as a component part of a highway or water conservation project;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

Section 6. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

CHAPTER NO. 373

[HB 419]

AN ACT ELIMINATING THE REQUIREMENT FOR AN AIR INSTRUCTOR LICENSE OR CERTIFICATE; REPEALING SECTION 67-3-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 67-3-221, MCA, is repealed.

Approved April 8, 1985.

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CHAPTER NO. 374

[HB 453]

AN ACT RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-737, AND 39-71-1003, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

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(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

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(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. *A worker shall be paid temporary total disability benefits during a reasonable period of retraining.* Disability shall be supported by a preponderance of medical evidence.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-737, MCA, is amended to read:

"39-71-737. Compensation to run consecutively — exception. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period *except that indemnity benefits under 39-71-705 through 39-71-708 and temporary total disability benefits may be paid concurrently.*"

Section 3. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided. *A person undergoing vocational rehabilitation must be paid temporary total disability benefits. In* addition thereto, *he may be paid,* upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

Section 4. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 8, 1985.

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CHAPTER NO. 375

[HB 457]

AN ACT PROVIDING THAT AN UNDERSHERIFF WHO WAS PREVIOUSLY A DEPUTY MUST RETURN TO OTHER DUTIES IN THE SHERIFF'S DEPARTMENT UPON HIS REPLACEMENT BY ANOTHER AS UNDERSHERIFF; AND PROVIDING FOR THE SALARY OF SUCH RETURNING DEPUTY; AMENDING SECTION 7-32-2102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2102, MCA, is amended to read:

"7-32-2102. Undersheriff to be appointed — return to other duties. *(1)* The sheriff, as soon as *possible* after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) must resume other duties within the sheriff's department, while maintaining his tenure and seniority, if the sheriff appoints another to succeed him as undersheriff. Upon the return to the position of deputy sheriff, such person shall be paid the same salary he would have received had he not taken the undersheriff position."

Approved April 8, 1985.

CHAPTER NO. 376

[HB 480]

AN ACT TO ALLOW ANY UNEXPENDED BALANCE FROM THE FIRST YEAR OF A BIENNIAL APPROPRIATION FOR SPECIAL EDUCATION TO BE EXPENDED IN THE SECOND YEAR; TO CLARIFY THE APPROVAL PROCESS FOR SPECIAL EDUCATION ALLOWABLE COSTS; AMENDING SECTION 20-7-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of

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determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

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(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations; *however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.*

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district."

Approved April 8, 1985.

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CHAPTER NO. 377

[HB 496]

AN ACT AUTHORIZING THE CREATION OF COUNTY PARK DISTRICTS FOR THE OPERATION OF COUNTY OR DONATED PARK AND RECREATION LANDS WITHIN THE DISTRICTS; PROVIDING FOR THE CREATION, AFTER AN ELECTION, OF SUCH A DISTRICT; PROVIDING FOR AN ELECTED COMMISSION TO ADMINISTER THE DISTRICT; PROVIDING FOR A PROPERTY TAX MILL LEVY FOR THE OPERATION OF THE DISTRICT; PROVIDING THAT THE MAXIMUM DISTRICT MILL LEVY MUST BE APPROVED BY THE DISTRICT ELECTORATE; PROVIDING FOR THE ADMINISTRATION OF SUCH A DISTRICT; PROVIDING BONDING AUTHORITY FOR SUCH A DISTRICT; AND PROVIDING FOR THE ALTERATION AND DISSOLUTION OF SUCH A DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Park and recreation land — definition.** As used in [this act], "park and recreation land" means real property, buildings, and fixtures on:

(1) land designated as park land or recreational land by the grant or deed of such land to the county;

(2) land owned, leased, or otherwise possessed by a county and which the governing body of a county has designated as park or recreational land;

(3) land belonging to a public or private entity or person who has donated the recreational rights to such land to a county park district on behalf of the county; or

(4) land which, by agreement between an owner of land and a county park district, the district may use for park or recreational purposes.

Section 2. **Duties of county park district.** A county park district shall operate and maintain park and recreation land within the district and may conduct such programs relating to parks and recreation and make such improvements to such land as the county park district commissioners consider appropriate.

Section 3. **Territory of county park district.** A county park district may contain the entire territory of a county or any part of a county. A county park district may include incorporated municipalities within the county.

Section 4. **Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

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(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsections (1) and (2) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(4) The county governing body shall schedule a public hearing on the creation of a county park district no earlier than 21 days or later than 45 days after the presentation of the petition or adoption of the resolution of intent to create a district. It shall cause to be published in the official county newspaper notice of the public hearing and the proposed boundary, mill levy, and number of members of the district commission.

(5) At the hearing, the county governing body shall hear testimony of all interested persons on whether a county park district should be created; testimony regarding the proposed boundary, property tax mill levy, and number of members of the district commission; and any other matter relating to the proposed district.

(6) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution set the boundaries of the proposed park district, the maximum mill levy for the proposed park district, and the number of members to be on the district commission. The resolution must also call for an election, which may be held in conjunction with any regularly scheduled election, on the question of whether to create the county park district.

Section 5. **Election on creation of district.** (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district shall be submitted to the electors in substantially the following form:

☐ FOR the creation of a county park district which may levy not more than _____ mills of property tax for the operation of the district.

☐ AGAINST the creation of a county park district.

(4) If a proposed county park district includes one or more municipalities or parts of municipalities, separate majorities on the question of forming the district are required of those voting who reside within each municipality and of those not residing within a municipality.

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Section 6. **Formation of county park district — appointment of initial commission.** (1) If the question of forming a county park district is approved by the electorate of the district, the county governing body shall, within 10 days of receipt of the official canvass of such result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the district, the county governing body shall appoint the initial members of the county park district commission. The members shall serve until their successors are elected and qualified.

Section 7. **Election of commissioners.** (1) After appointment of the initial commission and except in the case of vacancies, all members of the county park district commission must be elected by the electors of the district.

(2) The election of members to the commission must be held in conjunction with the school elections held pursuant to 20-3-304.

(3) Candidates for the office of member of the county park district commission must be nominated by petition filed with the office of the election administrator at least 30 days prior to the election day and signed by at least five electors of the district.

(4) If no nomination petition is filed for an office, the county governing body shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office. If there are no petitions of nomination for members of the commission, no election need be held.

(5) The term of office of elected members commences upon their being elected and qualified. The term of office of an elected member of the county park district commission is 4 years, except that a simple majority of the members of the first elected board shall serve terms of 2 years, with a minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the commission. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election.

Section 8. **Compensation of members of county park district commission.** Members of a county park district commission serve without compensation.

Section 9. **Powers of county park district commission.** A county park district commission has all powers necessary for the betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

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(2) lease, purchase, or contract for the purchase of personal property, including property which after purchase constitutes a fixture on real property;

(3) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain such buildings and facilities;

(4) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

(5) impose by resolution and collect charges for such services and facilities provided by the district as the commission considers necessary for the prudent operation of the district;

(6) establish a property tax mill levy for the operation of the district as provided in [section 10];

(7) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

(8) with the concurrence of the county governing body, accept donations of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county;

(9) accept donations and devises of money or personal property.

Section 10. **District budget — property tax levy.** (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the county governing body at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) The county governing body must, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district sufficient to raise the amount certified by the county park district commission. The tax so levied may not in any year exceed the maximum amount approved by the electorate in [section 4 or section 11].

Section 11. **Election to change maximum property tax mill levy.** (1) The maximum property tax mill levy authorized for the operation of a county park district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the county park district commission.

(3) The petition or resolution must set forth the proposed new maximum mill levy for the operation of the district.

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(4) Upon receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or a resolution for such a change adopted by the county park district commission, the county governing body shall submit to the electorate of the district, at the next election at which members are elected to the county park district commission, a ballot question on changing the maximum mill levy. The election on the question of changing the maximum mill levy must be held as provided in Title 13. The question must be submitted to the electors of the district in substantially the following form:

☐ FOR changing the authorized maximum property tax mill levy for the operation of the county park district from _____ to _____.

☐ AGAINST changing the authorized maximum property tax mill levy for the operation of the county park district.

(5) If a county park district includes one or more municipalities or parts of municipalities, separate majorities of those voting on the question of changing the property tax mill levy are required of those voting who reside within each municipality and of those not residing within a municipality.

(6) The new maximum property tax mill levy is authorized for the following tax year if approved by a simple majority of the votes on the question.

Section 12. **Park district bonds authorized.** (1) A county park district may borrow money by the issuance of its bonds to provide funds for payment of all or part of the cost of construction, acquisition, furnishing, equipping, extension, and betterment of park facilities and to provide an adequate working capital for such facilities.

(2) The amount of bonds issued for such purchase and outstanding at any time may not exceed 20% of the taxable value of the property within the district as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

Section 13. **Alteration of district boundaries.** (1) The boundaries of a county park district may be enlarged by the annexation of contiguous territory in the county or it may be reduced in size by the withdrawal of territory from the district after an election on the question approved by simple majorities of the electorate involved.

(2) The alteration of the district boundary may be initiated in the same manner as the creation of the district, except the applicable resolutions, hearings, and procedures must be adopted and conducted by the county park district commission and not by the county governing body. If the alteration is proposed by petition, the petition must be signed by 15% of the electorate in the territory to be annexed or withdrawn from the district and certified as sufficient by the county clerk.

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(3) (a) In the case of annexation, the vote on the question requires the separate majorities of the electorate of the territory to be annexed and the electorate of the then constituted district.

(b) In the case of withdrawal of territory, only the electorate of the territory to be withdrawn may vote on the question.

(4) A change in the boundaries of a district is effective on January 1 of the year following the election authorizing the change in boundaries.

Section 14. **Dissolution of county park district.** (1) A county park district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 25% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the county park district commission or the county governing body.

(2) Upon receipt of such a petition which has been certified by the county clerk as sufficient under this section or upon the adoption of such a resolution of intent, the county governing body shall call a public hearing on the question of dissolving the district and cause to be published a notice of the hearing in the official county newspaper.

(3) At the public hearing the county governing body shall hear testimony of interested persons regarding the dissolution of the district. After the public hearing the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by withdrawal of territory, it shall cause to be published notice of such a hearing in the official county newspaper. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at such hearing, the county governing body may submit the question of either dissolving the district or altering the district by withdrawal of specified territory from the district to the electorate of the district.

(4) Such a question must be submitted by a resolution calling for an election on either dissolving the district or altering the boundaries of the district by withdrawal of land from the district. The county governing body may call a special election for such purposes, or it may schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) The question of withdrawal of territory under this section must be voted on separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.

Section 15. **Effect of dissolution.** (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the

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county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, for as long as necessary, levy a property tax, in an amount not to exceed the voted maximum authorized by the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district. If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body is authorized to levy a property tax not to exceed the maximum levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations.

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county.

Approved April 8, 1985.

CHAPTER NO. 378

[HB 516]

AN ACT TO PROVIDE THAT LOCAL GOVERNING BODIES AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY APPLY ONLY THOSE RULES IN EFFECT AT THE TIME A SUBDIVISION APPLICATION IS SUBMITTED FOR REVIEW; AMENDING SECTIONS 76-3-501 AND 76-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. *(1)* Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the

avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

Section 2. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other

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methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(4) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

Approved April 8, 1985.

CHAPTER NO. 379

[HB 519]

AN ACT REQUIRING PAYMENT OF PROPERTY TAXES BEFORE A PARCEL OF LAND MAY BE DIVIDED; AMENDING SECTIONS 76-3-207 AND 76-3-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

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(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) No division of land may be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent."

Section 2. Section 76-3-303, MCA, is amended to read:

"**76-3-303. Contract for deed permitted if buyer protected.** Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."."

Approved April 8, 1985.

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CHAPTER NO. 380

[HB 530]

AN ACT CLARIFYING APPLICATION OF OVERWEIGHT VEHICLE PENALTIES AND PROVIDING AN ADDITIONAL PENALTY OF $100 FOR FAILURE TO USE A RETRACTABLE AXLE IF A VEHICLE IS SO EQUIPPED AND IS OVERWEIGHT; AMENDING SECTION 61-10-145, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-145, MCA, is amended to read:

"61-10-145. Penalties. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $50 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $70 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $100 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $160 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $220 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor

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vehicle is operated upon the highways of this state, the weight penalties in subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-110 shall specify the amount of the overweight which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with such a permit. The failure to obtain the special permit is punishable under 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(5) It is a misdemeanor, punishable as provided in 46-18-212, for any person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

Approved April 8, 1985.

CHAPTER NO. 381

[HB 560]

AN ACT REMOVING THE SWAN RIVER YOUTH FOREST CAMP FROM DESIGNATION AS A JUVENILE CORRECTIONAL FACILITY; AMENDING SECTIONS 53-30-202 AND 53-30-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-202, MCA, is amended to read:

"53-30-202. Establishment of juvenile correctional facilities. The department of institutions, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school *and* the Pine Hills school *but do not include* the youth forest camp."

Section 2. Section 53-30-214, MCA, is amended to read:

"53-30-214. Apprehension and return of child leaving juvenile facility without permission. A child who has left a juvenile facility of the department of institutions without permission may be apprehended and

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returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the department of institutions which has as its primary function the care, training, custody, and control of children and specifically includes the Pine Hills school for boys *and* the Mountain View school for girls."

Approved April 8, 1985.

CHAPTER NO. 382

[HB 594]

AN ACT REQUIRING NOTICE OF ENTRY ONTO LAND BY APPROPRIATE STATE AND LOCAL PERSONNEL FOR CERTAIN FLOODPLAIN AND FLOODWAY MANAGEMENT PURPOSES; REQUIRING RELEASE UPON REQUEST OF NAMES AND ADDRESSES OF ALL PERSONS OR ANY POLITICAL SUBDIVISION REQUESTING INVESTIGATION OF A NATURAL OR ARTIFICIAL OBSTRUCTION OR NONCONFORMING USE; AMENDING SECTION 76-5-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-105, MCA, is amended to read:

"76-5-105. Authority to enter and investigate lands or waters. *(1)* The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. *Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.*

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department *or the responsible political subdivision* either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. *Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation.*"

Section 2. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 8, 1985.

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CHAPTER NO. 383

[HB 622]

AN ACT TO DELETE AS AN ELEMENT OF THE OFFENSE OF ISSUING A BAD CHECK THE REQUIREMENT THAT IT BE DONE WITH THE PURPOSE OF OBTAINING CONTROL OVER PROPERTY OR TO SECURE PROPERTY, LABOR, OR SERVICES OF ANOTHER; AMENDING SECTION 45-6-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Approved April 8, 1985.

CHAPTER NO. 384

[HB 627]

AN ACT TO SPECIFY THE GENERAL DUTIES OF A GUARDIAN AD LITEM IN CASES OF CHILD ABUSE OR NEGLECT; AMENDING SECTION 41-3-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-303, MCA, is amended to read:

"41-3-303. Guardian ad litem. *(1)* In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

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(a) to conduct such investigation as he considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child, his siblings, and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform such other duties as directed by the court."

Approved April 8, 1985.

CHAPTER NO. 385

[HB 634]

AN ACT PROVIDING A SPECIAL REVENUE ACCOUNT FOR FUNDING THE OPERATIONS OF THE SECURITIES DIVISION OF THE STATE AUDITOR'S OFFICE; PROVIDING FOR DEPOSIT IN THE ACCOUNT OF FEES, EXAMINATION CHARGES, AND MISCELLANEOUS CHARGES COLLECTED BY THE DIVISION; PROVIDING THAT FINES AND PENALTIES COLLECTED BY THE DIVISION ARE TO BE DEPOSITED INTO THE GENERAL FUND; AMENDING SECTION 30-10-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for

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such securities may be amended to increase the amount of securities to be offered.

(c) A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee of $50. The late renewal fee may be waived by the commissioner upon a showing of good cause.

(d) For filing an annual statement, a posteffective amendment to a registration of securities, or a name change, the fee shall be $10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be $10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(16), the fee shall be established by the commissioner by rule. For a request for any other exemption, the fee shall be $50.

(5) All fees, examination charges, and miscellaneous charges, except fines or penalties, collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the securities regulatory trust account, pursuant to [sections 2 through 5].

(6) All fines and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the general fund."

Section 2. **Securities regulatory trust account.** (1) There is created in the state special revenue fund an account designated as the "securities regulatory trust account" into which all fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited.

(2) The money received and deposited in the securities regulatory trust account may be paid out of the treasury only on appropriation made by the legislature, as provided in 17-8-101, and may be used only to defray the

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expenses of the commissioner and his staff in the discharge of their administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The commissioner is responsible for the proper expenditure of this money as provided by law.

(3) Any cash balance remaining in the securities regulatory trust account after all current fiscal year expenditures are met must be transferred to the general fund.

Section 3. **Securities regulatory trust account investment.** (1) It is the responsibility of the commissioner, charged with the administration of the securities regulatory trust account, to make money in the account available for investment as fully as is consistent with the cash requirements of the account and to authorize investment of the account by the board of investments pursuant to Title 17, chapter 6, part 2.

(2) At least monthly, and more often as circumstances require, the commissioner shall notify the board of investments of the amount in the account available for investment, and that amount must be invested by the board of investments pursuant to Title 17, chapter 6, part 2. The notification must include the name and number of the account and the term of the investment if the principal sum is required for meeting obligations.

(3) All earnings derived from investment of the account must be paid into the securities regulatory trust account.

Section 4. **Securities regulatory trust account deficiency.** Whenever there exists in the securities regulatory trust account a deficiency that would render the account insufficient to meet the securities division's funding requirements, the state treasurer may order a transfer of money from another fund in the state treasury to the securities regulatory trust account in order to meet the deficiency without resorting to the necessity of borrowing money and paying interest thereon. The fund from which any money is transferred must be repaid the amount transferred from it not later than the end of the fiscal year in which the transfer is made or the date of repayment specified in the order of the state treasurer.

Section 5. **Appropriation and use of money — transition period.** Nothing in [sections 2 through 5] or 30-10-209 prevents continuing the practice of paying any of the direct or indirect expenses incurred by the commissioner or his staff, including but not limited to those involving salaries, retirement, social security contributions and state-paid insurance premiums of state officers and employees, or any other expenses, by appropriations from the general fund. However, the general fund must be reimbursed for any such payments made on or after July 1, 1985. Such reimbursements and any money transferred to the securities regulatory trust account in connection with the initial funding of the securities regulatory trust account must be repaid by transfer from the securities regulatory trust account to the general fund no later than the end of the next fiscal year.

Section 6. **Codification instruction.** Sections 2 through 5 are intended to be codified as an integral part of Title 30, chapter 10, parts 1 through 3.

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Section 7. **Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective July 1, 1985.

Approved April 8, 1985.

CHAPTER NO. 386

[HB 638]

AN ACT REVISING THE LAW PROVIDING EXEMPTIONS FOR SMALL MINERS FROM THE HARD-ROCK MINING LAW; PROHIBITING CERTAIN PERSONS, BUSINESS ASSOCIATIONS, PARTNERSHIPS, AND CORPORATIONS FROM OBTAINING SMALL-MINER EXEMPTIONS; SUBSTITUTING A CIVIL PENALTY FOR FAILURE TO COMPLY WITH THE CONDITIONS OF A SMALL-MINER EXEMPTION; AMENDING SECTIONS 82-4-303, 82-4-305, AND 82-4-361, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from

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below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(9) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(10) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

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(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(11) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(12) "Underground mining" means all methods of mining other than surface mining.

(13) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(14) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

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(2) *For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:*

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption."

Section 3. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part *or conditions of a small-miner exemption* shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part."

Section 4. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 8, 1985.

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CHAPTER NO. 387

[HB 654]

AN ACT PROVIDING THAT CERTAIN MOTOR VEHICLE OPERATION FINES BE ALLOCATED TO THE COUNTY GENERAL FUND; AMENDING SECTION 61-12-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-703, MCA, is amended to read:

"61-12-703. Disposition of traffic fines collected from juveniles. All fines collected by the district courts from persons under 18 years of age as the result of traffic summonses for unlawful operation of motor vehicles issued by peace officers of cities or counties or by highway patrolmen, together with the percentage of the fines otherwise deductible by law, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(1) Fines collected as the result of summonses issued by city peace officers shall be distributed to the city in which the peace officer is employed and credited to the city general fund.

(2) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county *general fund.*

(3) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer, who shall credit them to the general fund of the state.

(4) That portion of the fines deductible by law shall be paid to the state treasurer, who shall credit the money to the appropriate accounts in the state special revenue fund."

Approved April 8, 1985.

CHAPTER NO. 388

[HB 665]

AN ACT TO REVISE THE PROCEDURES INVOLVED IN TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP; AMENDING SECTIONS 41-3-603, 41-3-607, 41-3-609, AND 41-3-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-603, MCA, is amended to read:

"41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

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(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a *petition* for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services."

Section 2. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, *within 180 days after the filing of the petition.*

(2) After the county attorney, *attorney general, or an attorney hired by the county welfare department or office of human services* files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) *A* guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The *guardian ad litem* shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to *40-6-135*;

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(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

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Section 4. Section 41-3-610, MCA, is amended to read:

"41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination *to determine if the child has been permanently placed.*

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. *If the child is not in a permanent placement at the time of the review hearing, the* guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished."

Section 5. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 8, 1985.

CHAPTER NO. 389

[HB 714]

AN ACT TO CLARIFY THE DEFINITION OF "CLAIM" UNDER MONTANA'S TORT CLAIMS LAW; AMENDING SECTIONS 2-9-101 AND 2-9-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-101, MCA, is amended to read:

"2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. *For purposes of this section and the limit of liability contained in 2-9-107, all claims which arise or derive from personal injury to or death of a single person,*

or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof."

Section 2. Section 2-9-107, MCA, is amended to read:

"2-9-107. Limitation on governmental liability for damages in tort. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each *claim* and $1 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

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CHAPTER NO. 390

[HB 730]

AN ACT REVISING LAWS RELATING TO WEATHERIZATION; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ALLOCATE AND SPEND FOR HOME WEATHERIZATION AT LEAST 5 PERCENT OF FUNDS RECEIVED FROM THE FEDERAL LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM; AMENDING SECTIONS 90-4-201 AND 90-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-201, MCA, is amended to read:

"90-4-201. Weatherization money sources — consolidation. *(1)* All federal funds and grants available and becoming eligible to Montana under the provisions of the *U.S. department of energy* low-income weatherization assistance program, *the U.S. department of health and human services low-income home energy assistance program,* and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of social and rehabilitation services.

(2) The department of social and rehabilitation services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation."

Section 2. Section 90-4-202, MCA, is amended to read:

"90-4-202. Allocation formula. (1) The department of social and rehabilitation services may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) Each of the *human resource development councils or other public or nonprofit entities* shall receive that fraction of the remaining money as the number of eligible households in *its geographic area* bears to the total number of eligible households in the state.

(3) The department of social and rehabilitation services may transfer weatherization money among the *human resource development councils or other public or nonprofit entities* if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the *human resource development councils or other public or nonprofit entities* shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of social and rehabilitation services."

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Section 3. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 8, 1985.

CHAPTER NO. 391

[HB 759]

AN ACT PROVIDING AN INSURANCE REGULATORY TRUST ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND TO PROVIDE FUNDING FOR THE OPERATIONS OF THE INSURANCE DEPARTMENT OF THE STATE AUDITOR'S OFFICE ON THE BASIS OF FEES AND EXAMINATION AND MISCELLANEOUS CHARGES COLLECTED BY THE DEPARTMENT; PROVIDING THAT TAXES, FINES, AND PENALTIES COLLECTED BY THE DEPARTMENT MUST BE DEPOSITED INTO THE GENERAL FUND; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

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(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) temporary license 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 100.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 100.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued 5.00

(ii) annual renewal of license 5.00

(h) examination for license as agent or solicitor, each examination 10.00

(i) surplus line agent's license:

(i) application for original license and for issuance of license, if issued 25.00

(ii) annual renewal of license 25.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued 10.00

(ii) annual renewal of license 10.00

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(k) insurance vending machine license, each machine, each year 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all *fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.*

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to [sections 2 through 4]."

Section 2. **Insurance regulatory trust account.** (1) There is created in the state treasury an account within the state special revenue fund designated "insurance regulatory trust account" to which must be credited all fees and miscellaneous and examination charges, but not fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the insurance commissioner pursuant to Title 33 and the rules adopted thereunder.

(2) The money so received and deposited in the insurance regulatory trust account may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101 and must be used only to defray the expenses of the insurance commissioner and his staff in the discharge of their administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriations of state funds and to the deposit and expenditure of state money. The commissioner is responsible for the proper expenditure of this money as provided by law.

(3) Any cash balance remaining in the insurance regulatory trust account after all current fiscal year expenditures are met must be transferred to the general fund.

Section 3. **Insurance regulatory trust account investment.** (1) It is the responsibility of the insurance commissioner, charged with the administration of the insurance regulatory trust account, to make such money

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available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such money by the board of investments pursuant to Title 17, chapter 6, part 2.

(2) At least monthly, and more often if circumstances require, the insurance commissioner shall notify the board of investments of the amount available for investment, and the money must be invested by the board of investments pursuant to Title 17, chapter 6, part 2. Such notification must include the name and number of the account for which the investments are to be made and the term of the investment if the principal sum is to be required for meeting obligations.

(3) All earnings derived from investment of the account must be paid into the insurance regulatory trust account.

Section 4. **Insurance regulatory trust account deficiency.** Whenever there exists in the insurance regulatory trust account a deficiency that would render the account insufficient to meet the insurance department funding requirements, the state treasurer may order a transfer of money from another fund in order to meet the deficiency without resorting to the necessity of borrowing money and paying interest thereon. The fund from which any money is transferred must be repaid the amount transferred from it not later than the end of the fiscal year in which such transfer is made, the date of repayment to be specified in the order of the state treasurer.

Section 5. **Appropriation and use of money — transition period.** Nothing in [sections 2 through 4] prevents continuing the practice of paying any of the direct or indirect expenses incurred by the insurance commissioner, including but not limited to those involving salaries, retirement, social security, and state-paid insurance premiums of state officers and employees, or any other expenses by appropriations from the general fund. However, the general fund must be reimbursed for any such payments made on or after the effective date of this act. Such reimbursements and any money transferred to the insurance regulatory trust account in connection with the initial funding of the insurance regulatory trust account must be repaid by transfer from the insurance regulatory fund to the general fund no later than the end of the next fiscal year.

Section 6. **Codification instruction.** Sections 2 through 4 are intended to be codified as an integral part of Title 17, chapter 2, and the provisions of Title 17, chapter 2, apply to sections 2 through 4.

Section 7. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective July 1, 1985.

Approved April 8, 1985.

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CHAPTER NO. 392

[HB 760]

AN ACT REQUIRING THE COURT, TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY DIVISION IN THE DISSOLUTION DECREE; AMENDING SECTION 40-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-104, MCA, is amended to read:

"**40-4-104. Dissolution of marriage — legal separation.** (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects."

Approved April 8, 1985.

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CHAPTER NO. 393

[HB 796]

AN ACT PROVIDING A COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT ALLOWANCES AND SURVIVORSHIP ALLOWANCES PAID TO CERTAIN MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM OR THEIR BENEFICIARIES; INCREASING THE COUNTIES' CONTRIBUTIONS TO THE RETIREMENT SYSTEM; AMENDING SECTION 19-7-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost-of-living increase.** Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance.

Section 2. Section 19-7-404, MCA, is amended to read:

"19-7-404. Counties' contributions. (1) The various counties of Montana shall pay monthly *7.67%* of each sheriff's gross salary into the retirement account created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

Section 3. **Extension of authority.** Any existing authority of the sheriffs' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 8, 1985.

CHAPTER NO. 394

[HB 846]

AN ACT PROVIDING THAT ISSUANCE OF A TEMPORARY PRELIMINARY DECREE IN THE MILK RIVER BASIN BE MADE THE HIGHEST PRIORITY IN THE ADJUDICATION PROCESS BY THE MONTANA WATER COURTS; AMENDING SECTIONS 85-2-231 AND 85-2-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, there has long been in the Milk River Basin a scarcity of water available to meet the needs of all water users; and

WHEREAS, the precipitation in the Milk River Basin during the past 2 years has been even lower than usual; and

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WHEREAS, in 1981, the 47th Legislature recognized the growing problem of protection of existing water rights in the Milk River Basin, in view of continuing applications for new water rights, by enacting a law authorizing the Department of Natural Resources and Conservation to suspend action on new permits in the Basin; and

WHEREAS, tension has arisen among certain water users in the Milk River Basin because of uncertainty on the amounts and priorities of individual rights to the scarce water resources; and

WHEREAS, neither a preliminary nor temporary preliminary decree has been issued to date in the Milk River Basin in the Montana Water Court's adjudication of existing water rights; and

WHEREAS, complicated legal issues exist with respect to water rights in the Milk River Basin because of the 1909 Boundary Waters Treaty, the location in the Basin of federal Bureau of Reclamation irrigation projects, and the existence in the Basin of federal reserved water rights claims; and

WHEREAS, in view of these complicated legal issues, it may not be feasible at this time to issue a preliminary decree of water rights in the Milk River Basin; however, a temporary preliminary decree can be issued; and

WHEREAS, the Legislature finds that it is in the interest of water users in the Milk River Basin that the Montana Water Court issue a temporary preliminary decree in the Basin as soon as practicable.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a) the statements of claim before the water judge;

(b) the data submitted by the department;

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge. The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree *pursuant to 85-2-321 or* if such a decree is *otherwise* necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

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(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency whether or not it has been ratified by congress.

(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 2. Section 85-2-321, MCA, is amended to read:

"85-2-321. Milk River Basin — suspension of action on permits — proposal — priority in adjudication process. (1) *(a)* In order to balance the need for the continued development of Montana's water and for protection of existing rights in the Milk River Basin, the department may suspend action on a class of applications or may close a source in the basin and refuse to accept a class of applications, or both, for a permit under this part to appropriate from that source in the basin.

(b) Suspension or closure, or both, may only be proposed by the department.

(c) The proposal must state the source in the basin and class of applications for which suspension or closure, or both, is being proposed and any of the following allegations:

(i) that the frequency of occurrence of unappropriated waters is such that:

(A) any new appropriation from the source for the class of applications will adversely affect the rights of a prior appropriation from the source; or

(B) any new appropriation from the source for the class of applications will interfere unreasonably with another planned use or development for which a permit has been given or for which water has been reserved in the source; or

(ii) that significant disputes or enforcement problems regarding priority of rights or amounts or duration of water in use by appropriators are in progress or will arise.

(2) After [the effective date of this act], the chief water judge shall make issuance of a temporary preliminary decree in the Milk River Basin the highest priority in the adjudication of existing water rights pursuant to Title 85, chapter 2, part 2."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

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CHAPTER NO. 395

[HB 860]

AN ACT AUTHORIZING THE STATE LIBRARY TO IMPLEMENT AND OPERATE THE NATURAL RESOURCE INFORMATION SYSTEM AND THE NATURAL HERITAGE PROGRAM; AMENDING SECTIONS 2-15-1018, 90-15-101 THROUGH 90-15-103, 90-15-201, 90-15-202, AND 90-15-301 THROUGH 90-15-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1018, MCA, is amended to read:

"2-15-1018. Natural resource data system advisory committee. (1) There is a natural resource data system advisory committee consisting of an employee of the environmental quality council, *of the state library,* and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(2) The *state library* shall provide staff support to the committee, within the limits of the *library's* available resources."

Section 2. Section 90-15-101, MCA, is amended to read:

"90-15-101. Purpose. It is the purpose of this chapter to establish a planning framework for the development of a natural resource information system, *to implement the system,* and to establish an ongoing Montana natural heritage program."

Section 3. Section 90-15-102, MCA, is amended to read:

"90-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1018.

(2) *"Library" means the state library provided for in 22-1-201.*

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural resources and conservation; the department of fish, wildlife, and parks; the department of state lands; the department of health and environmental sciences; the department of agriculture; the department of highways; the state historical society; and the Montana university system."

Section 4. Section 90-15-103, MCA, is amended to read:

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"**90-15-103. Funding — appropriation.** The *library and each principal data source agency* may apply for and may receive funding from private and public sources for the purposes of this chapter, and any such funds are *[statutorily]* appropriated to the *library or to the appropriate principal data source agency* for such purposes *[as provided in section 2, HB 12]*."

Section 5. Section 90-15-201, MCA, is amended to read:

"**90-15-201. Duties of committee.** The committee shall examine the following matters and make recommendations to the *library* concerning:

(1) criteria for the categories and types of data to be collected for a natural resource information system;

(2) criteria for the format of data collection;

(3) identification of existing sources of relevant data in the public sector;

(4) identification of data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of data bases, and that utilize computer networking;

(5) probable costs to agencies furnishing required data and probable costs of managing the data;

(6) probable benefits to be realized by the establishment of a natural resource information system;

(7) operation of the Montana natural heritage program; and

(8) other items the committee considers of importance to the establishment of a natural resource information system."

Section 6. Section 90-15-202, MCA, is amended to read:

"**90-15-202. Committee staff.** The *library* shall provide staff support to the committee, within the limits of the *library's* available resources."

Section 7. Section 90-15-301, MCA, is amended to read:

"**90-15-301. Establishment of information system.** (1) The *library*, in consultation with the committee, shall establish a planning framework for the implementation of a natural resource information system *and shall begin implementation of the plan.* This system is to be a comprehensive program for the acquisition, storage, and retrieval of existing data relating to the natural resources of Montana.

(2) The *library* shall give attention to the factors listed in 90-15-201 and shall prepare any legislation necessary to implement the system.

(3) It is not intended that the system shall require fieldwork to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations."

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Section 8. Section 90-15-302, MCA, is amended to read:

"90-15-302. Natural heritage program. (1) There is a Montana natural heritage program to be operated by the *library*. In order to establish the program, the *library* may contract with an independent contractor *or may employ necessary staff. In order to minimize costs, the library or other state agencies may make available state resources and facilities to an independent contractor as part of a contract for services.*

(2) The Montana natural heritage program shall be designed to be compatible with similar programs in other states. This program is to be an initial step in the formulation of the comprehensive natural resource information system referred to in 90-15-301 and is to be considered a part of the system."

Section 9. Section 90-15-303, MCA, is amended to read:

"90-15-303. Interagency cooperation. (1) State agencies shall cooperate with the *library* and the committee in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the *library* for purposes of the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the *library*. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data."

Section 10. Section 90-15-304, MCA, is amended to read:

"90-15-304. Availability of information. (1) Except as provided in subsection (3), the *library* shall make information from the natural resource information system available to local, state, and federal agencies and to the general public.

(2) The *library* may establish a fee system for information requests in order to cover the costs of providing requested information.

(3) If necessary, the *library* shall establish procedures to protect confidential information in the possession of state agencies."

Section 11. **Coordination instruction.** If House Bill No. 12 of the 49th legislature is not passed and approved, the bracketed language in section 4 of this act is void. If House Bill No. 12 is so passed and approved, there is added to the listing of laws containing statutory appropriations, in section 2 of House Bill No. 12, a reference to 90-15-103.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

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CHAPTER NO. 396

[HB 875]

AN ACT REVISING THE LAWS APPLICABLE TO REGISTRATION AND VOTING BY ABSENTEE BALLOT OF ELECTORS IN THE UNITED STATES SERVICE; AMENDING SECTIONS 13-2-203, 13-2-212, 13-2-214, AND 13-13-211, MCA; REPEALING SECTION 13-2-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-203, MCA, is amended to read:

"13-2-203. Registration by mail. (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which he resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state.

(3) The elector shall complete, sign, and, *except as provided in 13-2-212,* either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed by the witness or officer before whom signed."

Section 2. Section 13-2-212, MCA, is amended to read:

"13-2-212. Registration of electors in the United States service. (1) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed; or

(b) the federal post card application, filled out and signed.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state."

Section 3. Section 13-2-214, MCA, is amended to read:

"13-2-214. Classification of federal post card application. (1) *Unless the elector is already registered, a federal post card application*

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received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.

(2) Upon receipt by the election administrator of a federal post card application, properly filled out and signed, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered;

(c) send to the applicant by the fastest mail service available a notice that he has been registered and informing him that *a ballot is enclosed or that he will be mailed an absentee ballot for the next election in which he is entitled to vote under subsection (1).*

(3) The election administrator may use photocopies of the post card application to complete all necessary records."

Section 4. Section 13-13-211, MCA, is amended to read:

"13-13-211. Application of absentee or physically incapacitated elector for ballot. *Except as provided in 13-2-214, during* a period beginning 75 days before the day of election and ending at noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated or an elector who will be unable to go to the polls because of physical incapacity may apply to the election administrator for an absentee ballot."

Section 5. **Repealer.** Section 13-2-213, MCA, is repealed.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

CHAPTER NO. 397

[HB 893]

AN ACT LIMITING THE NUMBER OF COPIES OF THE ADMINISTRATIVE RULES OF MONTANA TO BE PROVIDED TO COUNTIES; REMOVING THE PROVISION FOR PROVIDING A COPY TO THE CLERK OF EACH COURT OF RECORD; AMENDING SECTION 2-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto, with costs paid as provided in 2-4-312(2), to the following:

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(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana, one copy;

(i) legislative council, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register. The cost shall be the approximate cost of publication, including indexing, printing or duplicating, and mailing, less fees charged agencies pursuant to subsection (6) and money appropriated for 2-4-312(2) and 2-4-313(1). However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in an account within the state special revenue fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover a portion of the costs of publication and mailing."

Approved April 8, 1985.

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CHAPTER NO. 398

[HB 354]

AN ACT ABOLISHING STATE LICENSING OF AIRPORTS AND OTHER AIR NAVIGATION FACILITIES; AMENDING SECTIONS 67-3-101 AND 67-3-104, MCA; REPEALING SECTIONS 67-3-301 THROUGH 67-3-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, on August 2, 1984, the District Court of Lewis and Clark County ordered the establishment of a procedure to license airports and the actual licensing of airports meeting the appropriate criteria; and

WHEREAS, the regulation of airports and other air navigation facilities is the responsibility of the United States, which inspects airports and other air navigation facilities and certifies or licenses airports and other air navigation facilities in accordance with the applicable federal aviation regulations and Federal Aviation Administration advisory circulars; and

WHEREAS, it is unnecessary that the State of Montana also inspect and license airports and other air navigation facilities; and

WHEREAS, it is the intent of the Legislature to remove the requirement for the licensing of airports and other air navigation facilities by the repeal of sections 67-3-301 through 67-3-306, MCA; and

WHEREAS, the department has authority to control the safety of persons and property on land or water in connection with the use of aircraft in this state under 67-2-102, MCA.

THEREFORE, it is the intent of this bill to remove the need for the State of Montana to license airports and other air navigation facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 67-3-301 through 67-3-306, MCA, are repealed.

Section 2. Section 67-3-101, MCA, is amended to read:

"67-3-101. Regulation and licensing — general provisions. In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding $1. It may accept as evidence of the

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holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than $1 and for the renewal of a license not more than $1.

(3) upon notification by the civil aeronautics authority that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, temporarily or permanently revoke the license or certificate of registration issued for that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action."

Section 3. Section 67-3-104, MCA, is amended to read:

"67-3-104. Department orders. (1) The department shall set forth its reasons for its action and shall state the requirements to be met before approval will be given, registration permitted, license granted, or order modified or changed before it:

(a) refuses to permit the registration of a license, certificate, or permit;

(b) refuses to grant a license to an air school or to an aeronautics instructor in ground subjects; or

(c) issues an order requiring certain things to be done or revoking a license or certificate.

(2) An order made by the department under this title shall be served upon the interested persons by registered or certified mail or in person.

(3) (a) A person aggrieved by an order of the department or by the granting or denial of a license, certificate, or registration may, within 10 days after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located.

(b) The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it.

(c) The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial.

(d) The appeal shall be heard not less than 10 days or more than 30 days after the filing of the notice of appeal unless the judge, for sufficient

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cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

CHAPTER NO. 399

[HB 396]

AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING SECTION 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

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(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan including, but not limited to, a reasonable time line for the completion of the project and the actual application of the water to a beneficial use, which may not exceed 10 years from the date of application, detailing when and how much water will be put to a beneficial use;

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 2. **Extension of authority.** Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to all applications filed after July 1, 1973.

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Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

CHAPTER NO. 400

[SB 81]

AN ACT DISQUALIFYING A PERSON FOR UNEMPLOYMENT BENEFITS IF HIS UNEMPLOYMENT RESULTS FROM A STRIKE EXCEPT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 39-51-2305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2305, MCA, is amended to read:

"39-51-2305. Disqualification when unemployment due to strike. (1) *An* individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a *strike* which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the *strike*; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the *strike*, there were members employed at the premises at which the *strike* occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other

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conditions of work, such labor dispute shall not render the workers ineligible for benefits."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 401

[SB 187]

AN ACT CLARIFYING THE AMOUNT AND PAYMENT OF RETIREMENT BENEFITS TO A LAW ENFORCEMENT OFFICER WHO HAS SERVICE CREDITS IN BOTH THE SHERIFFS' AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; REVISING THE METHOD OF CALCULATING A SERVICE RETIREMENT ALLOWANCE BASED ON MORE THAN 25 YEARS OF SERVICE; AND DEFINING THE BENEFIT AVAILABLE TO BENEFICIARIES UPON THE DEATH OF CERTAIN MEMBERS UNDER THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-308, AND 19-7-503, MCA; AND REPEALING SECTION 19-7-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

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(8) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means any person who has accumulated deductions in the account to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(11) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(12) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(13) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(14) "Retirement allowance" means the state annuity plus the member's annuity.

(15) "Service" means employment as a sheriff.

(16) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(17) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(18) "Vested retirement" means a retirement not for cause and before retirement age."

Section 2. Section 19-7-308, MCA, is amended to read:

"19-7-308. Service under municipal police officers' retirement system prior to or following city-county consolidation. (1) A law enforcement officer who has not changed his employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if his combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which he last made contributions. A sheriff who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue his election. However, credit for service in the PERS which has not been transferred prior to January 1, 1979, may not be transferred.

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(2) Eligibility for *and calculation of* disability retirement, death benefits, and refund of contributions *are* governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of an officer described in subsection (1) shall be calculated separately for each system based on the service credited under each system. *The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement allowance for an optional retirement allowance elected under 19-7-701.* The final salary or final average salary for each calculation shall be based on the highest salary earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the final salary or final average salary.

(4) Upon the death of an officer receiving a service retirement allowance under this section, the beneficiary and the continued benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the officer's surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal to the municipal police officers' retirement system portion of the officer's service retirement allowance as calculated at the time of his retirement. If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit, the officer's beneficiary, designated under 19-7-602, shall receive:

(i) an annuity as determined under 19-7-701, if the officer elected an optional retirement allowance; or

(ii) if the officer did not elect an optional retirement allowance, any payment owed the officer, including the excess, if any, of his accumulated deductions standing to his credit at the time of retirement less payments made to the officer."

Section 3. Section 19-7-503, MCA, is amended to read:

"19-7-503. Service retirement allowance. (1) The amount of any service retirement allowance *granted to a member with 25 years or less of creditable service* shall be 2% of his final salary for each year of creditable service, up to a maximum of 50% of final salary.

(2) The member's retirement allowance shall be increased for any member who contributes after 25 years of service by *1.35% of his final*

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salary for each year of creditable service in excess of 25 years of service, *up to a maximum of 60% of his final salary.*

(3) If a member dies after retirement and had not elected an optional retirement allowance provided for in 19-7-701, his beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member."

Section 4. **Repealer.** Section 19-7-603, MCA, is repealed.

Section 5. **Extension of authority.** Any existing authority of the sheriffs' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 402

[SB 194]

AN ACT PROVIDING FOR THE LICENSING OF PERSONS WHO USE EXPLOSIVES IN THE DEMOLITION OR CONSTRUCTION OF BUILDINGS OR FOR CERTAIN OTHER PURPOSES; PROHIBITING SUCH USE OF EXPLOSIVES UNLESS LICENSED OR UNDER THE SUPERVISION OF A LICENSEE; PROVIDING FOR LICENSING REQUIREMENTS AND EXAMINATIONS; PROVIDING FOR LICENSURE OF PERSONS LICENSED BY OTHER JURISDICTIONS; PROVIDING FOR REGULATION OF THE USE OF EXPLOSIVES; GRANTING RULEMAKING POWER TO THE WORKERS' COMPENSATION DIVISION; PROVIDING FOR DISCIPLINE OF LICENSEES; AND PROVIDING FOR CIVIL AND CRIMINAL PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Construction blasting restrictions — license required — definitions — exemptions.** (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of [this act]:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

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(c) "division" means the workers' compensation division of the department of labor and industry provided for in 2-15-1702;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in [this act] applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from [this act] by this subsection must comply with rules adopted under [section 9(1)(c)] and the provisions of [section 12] apply to a violation of those rules by an exempted person.

(4) [This act] does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(3)(e).

Section 2. **General qualifications.** A person making initial application to the division for a license as a construction blaster shall:

(1) pay an application fee to the division; and

(2) furnish proof under oath, on a form provided by the division, that he:

(a) is at least 18 years old;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by [section 3] and the rules of the division.

Section 3. **Training and experience requirements.** (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the division, that he has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the division; and

(b) at least 1 year of posttraining experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) No training program may be approved by the division that does not offer comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The division shall by rule adopt a list of approved training programs.

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Section 4. **Licensure by examination — fee.** (1) The division shall, at least once a year, administer an examination to applicants meeting the requirements of [sections 2 and 3] and the rules adopted by the division. The division shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination shall at a minimum test the applicant's knowledge of the rules of the division governing construction blasting.

(2) An applicant for licensure by examination shall pay an examination fee to the division.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with [section 3], upon payment to the division of a reexamination fee.

Section 5. **Issuance of license — fee.** Upon receipt of a license fee, the division shall issue a license to each person who meets the requirements for licensure as prescribed in [this act]. The license must include the dates of issuance and expiration and a serial number. It must be signed by the administrator of the division.

Section 6. **Licensure of persons licensed by other jurisdictions.** Upon receipt of a license fee, the division shall issue a license to any person fulfilling the requirements of [section 2(2)(a) through (2)(d)] who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing him to supervise or engage in the practice of construction blasting if the division finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of [sections 2, 3, and 4].

Section 7. **Annual renewal.** (1) A license issued under [this act] expires January 1 following the date of its issuance or renewal and is invalid thereafter. The division shall notify each person licensed under [this act] of the date of the expiration of his license and the amount of his renewal fee. The notice must be mailed to each licensed construction blaster at his listed address at least 1 month before the expiration of his license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee must be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the division, and the applicant may be required to successfully complete an examination.

Section 8. **License — form — pocket card.** (1) The division shall prescribe the form of license.

(2) The division shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

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Section 9. **Rules for use of explosives — variances.** (1) The division shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The division shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the division on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under [this act] that:

(a) compliance with the rule for which a variance is sought would be impracticable; and

(b) the proposed variance from division rules will not constitute a danger to property or public safety.

Section 10. **General rulemaking power.** The division shall adopt rules to:

(1) implement the training and experience requirements of [section 3];

(2) prescribe the amount of the fees provided for in [sections 2, 4, and 5 through 7], which must be nonrefundable, in an amount commensurate with the cost of administering [this act], and deposited in the state special revenue fund for the use of the division;

(3) regulate the use of explosives and grant variances under the provisions of [section 9], except that, unless the division is making an investigation under [section 11(2)], the division does not have the power under [this act] to make inspections into construction blasting and may not adopt rules providing for such inspections or for inspectors to carry out such inspections;

(4) provide for the form of the license and pocket card provided for in [section 8]; and

(5) provide for the conduct of the business of the division under [this act] and govern its proceedings under [section 11].

Section 11. **Revocation, suspension, or refusal to renew license — grounds — procedure.** (1) The division may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

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(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the division.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the division. The charges must be investigated by the division. Unless the division, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The division may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

Section 12. **Penalty — injunction.** (1) A person convicted of violating any provision of [this act] or the rules of the division is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of [sections 1 through 10] or the rules of the division as a nuisance per se; and the division, the attorney general, or any county attorney may institute proceedings for an injunction.

Section 13. **Application to existing licensees.** Any person licensed as a construction blaster by any state or any agency of the United States on October 1, 1985, who presents his license to the division before January 1, 1986, must be issued a license to act as a construction blaster but is subject to the provisions of [sections 1 and 7 through 12].

Approved April 10, 1985.

CHAPTER NO. 403

[SB 224]

AN ACT TO INCREASE THE BOND DEBT LIMIT OF THE BOARD OF HOUSING TO $975 MILLION; AMENDING SECTION 90-6-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

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(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The board shall designate whether interest payments on the bonds are taxable or tax exempt. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed *$975* million. *The issue price of bonds sold at a discount, not the face amount of the bonds, counts against this statutory ceiling.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 404

[SB 226]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE BOARD OF HEARING AID DISPENSERS; PROVIDING A CONTINUING EDUCATION REQUIREMENT; REVISING THE TRAINEE LICENSE LAW; AND GIVING THE BOARD AUTHORITY TO FINE LICENSEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-16-101, MCA, is amended to read:

"**37-16-101. Declaration of policy.** The selling, *dispensing,* and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This

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chapter shall be liberally construed to carry out the objects and purposes hereinafter described in accordance with this declaration of policy."

Section 2. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License" means a regular or trainee license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of *selling*, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, *dispensing, or fitting* of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

Section 3. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency."

Section 4. Section 37-16-202, MCA, is amended to read:

"37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

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(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, *dispensing, or* fitting of hearing aids in this state who is not licensed under this chapter."

Section 5. Section 37-16-301, MCA, is amended to read:

"37-16-301. Permanent place of business in state necessary — records — notice. (1) A person who *is actively engaged in dispensing* hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids. *All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one licensee may work from a permanent place of business.*

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change."

Section 6. Section 37-16-302, MCA, is amended to read:

"37-16-302. Sale of dispensing business. A business *selling,* dispensing, *or fitting* hearing aids may be sold provided the new owners comply with all the provisions of this chapter."

Section 7. Section 37-16-303, MCA, is amended to read:

"37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the *selling,* fitting, or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature and show the name and address of his *permanent* place of business and the number of his license, together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) *(a)* Any person practicing the *selling, dispensing, or* fitting of hearing aids shall, when dealing with a person *under 19* years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his recommendations. If such not be

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the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids shall, when the aid is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid *dispenser* in connection with the *dispensing*, fitting, and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice.""

Section 8. Section 37-16-401, MCA, is amended to read:

"37-16-401. License required. A person may not engage in *selling*, dispensing, *or* fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the *selling*, dispensing, *or* fitting of hearing aids *in Montana* unless he holds a current regular or temporary license issued by the department."

Section 9. Section 37-16-402, MCA, is amended to read:

"37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school, has continuously engaged in the practice of *selling*, fitting, *or* dispensing hearing aids *in Montana* during the 3 years preceding the date of application, or holds a current license as an audiologist under Title 37, chapter 15;

(3) is free of contagious or infectious disease."

Section 10. Section 37-16-403, MCA, is amended to read:

"37-16-403. Examination — time and place. An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids."

Section 11. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the *practical* examination under 37-16-403 may apply to the board for a trainee license.

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(2) On receiving an application under subsection (1) of this section, accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board *and verification that the applicant has passed the written portion of the examination with a score of at least 70%*, the board shall issue a trainee license which entitles the applicant to engage in a *12-month* training period during which he shall:

(a) *pass the practical examination administered by the board;*

(b) work for a period of 60 days during which he may do the testing necessary for proper selection and fitting of a hearing aid and make necessary impressions, but the delivery and final fitting of the hearing aid must be made by his supervisor; and

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, but while under supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous *12-month* term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a licensed hearing aid dealer accepting responsibility for the trainee. Every licensee supervising a trainee license holder must submit a quarterly report of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate his responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the *practical* examination given *within* his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the next examination. In no event may more than two renewals be permitted. The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the *12-month training period but is required to pass the examinations prescribed in* this chapter."

Section 12. Section 37-16-406, MCA, is amended to read:

"37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of *dispensing*, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to *sell*, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, *dispense*, and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to

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submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter."

Section 13. Section 37-16-407, MCA, is amended to read:

"37-16-407. Renewal of license — fee. *(1)* A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. The fee shall be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to *the examinations described in 37-16-403* as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal must submit evidence showing completion of 4 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule."

Section 14. Section 37-16-408, MCA, is amended to read:

"37-16-408. Deposit of fees and fines. Fees *and fines* collected under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6)."

Section 15. Section 37-16-411, MCA, is amended to read:

"37-16-411. Revocation or suspension of license — fines. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board *or be fined not to exceed $500 per incident* for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2 of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", *"hearing clinic"*, "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate;

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(12) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(13) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(14) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids."

Section 16. Section 37-16-413, MCA, is amended to read:

"37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the *selling*, fitting, or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding."

Section 17. Section 2-15-1850, MCA, is amended to read:

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"**2-15-1850. Board of hearing aid dispensers.** (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor with the consent of the senate. The members are:

(a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;

(b) three members who have been *licensed* dispensers and fitters of hearing aids for at least 5 years before their appointment to the board;

(c) one public member who is not in the hearing health care field.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 18. **Extension of authority.** Any existing authority of the board of hearing aid dispensers to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 405

[SB 296]

AN ACT TO REVISE THE EXAMINATION GRADE REQUIREMENTS AND REEXAMINATION PROCEDURES FOR A LICENSE TO PRACTICE MEDICINE; AMENDING SECTION 37-3-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-311, MCA, is amended to read:

"**37-3-311. Examination.** (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

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(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or its successor.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain *a passing* grade *as set by the board.* If an applicant fails to meet the minimum grade requirements in his first examination, he may be reexamined *not more than two additional times on each of the component parts of the examination.* An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application."

Section 2. **Extension of authority.** Any existing authority of the board of medical examiners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved April 10, 1985.

CHAPTER NO. 406

[SB 450]

AN ACT INCLUDING CONSUMER LOAN LICENSEES IN THE DEFINITION OF "REGULATED LENDER"; EXEMPTING CONSUMER LOAN LICENSEES FROM USURY LIMITS; AMENDING SECTIONS 31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501, AND 32-5-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, *consumer loan licensee,* development corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. Except as provided in subsection (2), a person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(4) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

Section 3. Section 32-5-301, MCA, is amended to read:

"32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee *or holder of a supplementary license* hereunder may contract for and receive on any loan of money *interest charges as provided under 31-1-112.*

(2) Charges in (1) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of

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the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(5) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

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(vi) fees paid to a trustee for release of a trust deed.

(6) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis."

Section 4. Section 32-5-303, MCA, is amended to read:

"32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, the disclosures required by the Federal Consumer Credit Protection Act, a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301*(5)*;

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301*(3)* if such loan is prepaid in full."

Section 5. Section 32-5-322, MCA, is amended to read:

"32-5-322. Deferral charge — rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under subsection *(3)* of 32-5-301 as of the scheduled due date of the first deferred installment

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and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to subsection *(3)* of 32-5-301."

Section 6. Section 32-5-501, MCA, is amended to read:

"32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges, *as allowed under 31-1-112,* on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301*(5)*."

Section 7. Section 32-5-506, MCA, is amended to read:

"32-5-506. Provisions not applicable. The provisions of subsections *(3)* and *(4)* of 32-5-301 and the provisions of 32-5-304 do not apply to open-end loans."

Section 8. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 10, 1985.

CHAPTER NO. 407

[SB 350]

AN ACT PROVIDING FOR THE IMPOSITION OF FINES BY THE SECURITIES COMMISSIONER UPON A FINDING THAT THE SECURITIES ACT OF MONTANA HAS BEEN VIOLATED OR UPON THE REVOCATION OR SUSPENSION OF THE LICENSE OF A BROKER-DEALER, SALESMAN, OR INVESTMENT ADVISER; PROVIDING SANCTIONS FOR FAILURE TO PAY SUCH FINES; AMENDING SECTIONS 30-10-201 AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions

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exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) When the registration requirements are complied with, the commissioner shall approve the registration.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

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(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or

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expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(13) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, or investment adviser under subsection (10), impose a fine not to exceed $5,000 upon such broker-dealer, salesman, or investment adviser. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be

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taken pursuant to 30-10-308. If any broker-dealer, salesman, or investment adviser fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, or investment adviser in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, or investment adviser to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 2. Section 30-10-305, MCA, is amended to read:

"**30-10-305. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

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Section 3. **Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 408

[SB 353]

AN ACT PROVIDING PREFERENCE TO EMPLOYEE-OWNED ENTERPRISES FOR LOANS UNDER THE MONTANA IN-STATE INVESTMENT ACT OF 1983; AMENDING SECTIONS 17-6-302 AND 17-6-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board established in 2-15-1805.

(2) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(4) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(5) "Loan participation" means loans or portions thereof bought from a financial institution.

(6) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(7) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

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(8) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(9) "Montana in-state investment fund" means the fund established by 17-6-305.

(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 2. Section 17-6-309, MCA, is amended to read:

"17-6-309. Investment preferences. In deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

(1) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy;

(2) are for locally owned enterprises that are either expanding or establishing new operations;

(3) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(4) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(5) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(6) benefit small- and medium-sized businesses as defined in rules adopted by the board."

Section 3. **Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 409

[SB 447]

AN ACT TO AMEND SECTION 39-51-2304, MCA, OF THE MONTANA UNEMPLOYMENT INSURANCE LAW TO CONFORM IT TO THE FEDERAL UNEMPLOYMENT TAX ACT AS REQUIRED BY FEDERAL LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual is disqualified for benefits if he fails without good cause either to apply for available

and suitable work when so directed by the employment office or the department or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the department, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, *including subsection (4),* no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) *Subject to subsection (3), after* 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the *individual's earnings in his previous insured work in his customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage.*"

Section 2. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 410

[HB 155]

AN ACT DECLARING IT A FELONY TO KEEP OR TRAIN AN ANIMAL WITH THE INTENT THAT THE ANIMAL BE ENGAGED IN AN EXHIBITION OF FIGHTING WITH ANOTHER ANIMAL, TO ALLOW OR CAUSE AN ANIMAL TO FIGHT ANOTHER ANIMAL, TO PERMIT A VIOLATION OF THIS ACT TO TAKE PLACE, OR TO AID, ABET, OR BE KNOWINGLY PRESENT AT SUCH FIGHTING BETWEEN ANIMALS; PROVIDING PENALTIES; AMENDING SECTION 45-8-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"**45-8-211. Cruelty to animals.** (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 2. **Definition.** For purposes of [section 3], "animal" means any cock, bird, dog, or mammal except man.

Section 3. **Causing animals to fight — owners, trainers, and spectators — penalties — exception.** (1) A person commits the offense of causing animals to fight if he:

(a) owns, possesses, keeps, or trains any animal with the intent that such animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under his charge or control, or aids or abets any such act;

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(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both such fine and imprisonment.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45 apply to sections 2 and 3.

Approved April 10, 1985.

CHAPTER NO. 411

[HB 186]

AN ACT ALLOWING PASSAGE OF COUNTY ORDINANCES TO CONTROL COMMUNITY DECAY CAUSED BY ACCUMULATION OF RUBBLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition.** (1) In [this act], "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in [this act] may not be construed or defined to apply to normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations.

Section 2. **Control of community decay.** (1) The governing body of a county may regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county by adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) An ordinance adopted under subsection (1) may include time limits for removal or shielding of such conditions as considered appropriate by the governing body.

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(3) Nothing in this section restricts the governing body from enacting community decay controls affecting only portions of the county.

(4) Nothing in [this act] may be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution that is more restrictive than the provisions of [this act].

(5) For the purposes of enforcing an ordinance adopted under subsection (1), the county governing body may provide that, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes is enforced.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 412

[HB 187]

AN ACT TO AUTHORIZE A DISTRICT COURT TO AWARD THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES THE COSTS INCURRED BY IT TO INVESTIGATE AND ABATE VIOLATIONS OF THE PUBLIC WATER SUPPLY ACT; AMENDING SECTION 75-6-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-111, MCA, is amended to read:

"75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. *The court may award the department costs and expenses incurred in investigating and abating the violation.* The department may also initiate an action to collect a criminal penalty as provided in 75-6-113."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

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Section 3. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 413

[HB 263]

AN ACT REQUIRING LOCAL GOVERNMENTS AND SCHOOL DISTRICTS TO PAY INTEREST ON OVERDUE ACCOUNTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions relating to interest assessment.** As used in [sections 2 and 3], the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a county or a municipality.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a county or municipality, including leases of equipment. The term also includes leases of buildings or other real property by a county or municipality.

Section 2. **Interest assessed on amounts due.** (1) Except as provided in [section 3], a county or municipality shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the county or municipality fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 35 days after receipt of a properly completed invoice, addressed to the payer county or municipality, or receipt of the supplies or services by the county or municipality, whichever is later.

Section 3. **Exemptions.** [Section 2] does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the county or municipality;

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(4) contracts entered into before October 1, 1985; or

(5) wages due and payable to county or municipal employees or payments from any retirement system created pursuant to Title 19.

Section 4. **Definitions relating to interest assessment.** As used in [sections 5 and 6], the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

Section 5. **Interest assessed on amounts due.** (1) Except as provided in [section 6], a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

Section 6. **Exemptions.** [Section 5] does not apply to the following:

(1) third-class school districts where the board of trustees does not meet monthly;

(2) interdistrict or intergovernmental transactions;

(3) claims subject to a good faith dispute;

(4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;

(5) contracts entered into before October 1, 1985; or

(6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

Section 7. **Codification instruction.** Sections 4 through 6 are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20 apply to sections 4 through 6.

Approved April 10, 1985.

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CHAPTER NO. 414

[HB 282]

AN ACT TO AUTHORIZE THE FISH AND GAME COMMISSION TO AUCTION ONE MALE MOUNTAIN SHEEP LICENSE EACH YEAR; AND TO PROVIDE THAT MONEY GENERATED BY SUCH AUCTION BE USED FOR THE BENEFIT OF MOUNTAIN SHEEP.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Auction of mountain sheep license.** (1) The commission may issue one male mountain sheep license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of mountain sheep may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain proceeds of the sale, not to exceed 10%, to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain sheep. The proceeds from the auction must be used in addition to any other funds the department uses for the management of mountain sheep. The department shall report to each legislature concerning the use or investment of auction proceeds.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87 apply to section 1.

Approved April 10, 1985.

CHAPTER NO. 415

[HB 683]

AN ACT TO AUTHORIZE A COUNTY GOVERNING BODY TO ENACT ORDINANCES FOR THE ENFORCEMENT OF COUNTY PARK BOARD RULES; TO ALLOW THE COUNTY GOVERNING BODY TO AUTHORIZE A COUNTY PARK BOARD TO EMPLOY A COUNTY PARK WARDEN; TO PROVIDE THAT SUCH A WARDEN IS NOT A PEACE OFFICER; AMENDING SECTION 7-16-2322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2322, MCA, is amended to read:

"7-16-2322. Rules and ordinances to implement part. (1) *(a)* A county park board, in addition to powers and duties now given under law, *has* the following powers and duties:

(i) to make rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of said board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(ii) to make rules for the use of land and facilities by the public; and

(iii) to provide penalties for the violation of such rules.

(b) The rules authorized by *subsection (1)* have the force of resolutions of the county commissioners.

(2) The county governing body, by the adoption of an ordinance in substantial compliance with the provisions of 7-5-103 through 7-5-107, may:

(a) provide that violations of specific rules adopted pursuant to subsection (1) constitute criminal offenses and are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, as defined in 46-1-201. The law enforcement powers of a park warden are limited to issuing citations charging violations of park ordinances and rules."

Approved April 10, 1985.

CHAPTER NO. 416

[HB 764]

AN ACT TO ALLOW HUNTING BY CERTAIN DISABLED PERSONS FROM WITHIN A SELF-PROPELLED VEHICLE AND FROM WITHIN A VEHICLE PARKED ON THE SHOULDER, BERM, OR BORROW-PIT RIGHT-OF-WAY OF A PUBLIC HIGHWAY, EXCEPT A STATE OR FEDERAL HIGHWAY; AMENDING SECTIONS 61-8-369, 87-2-803, AND 87-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-369, MCA, is amended to read:

"**61-8-369. Shooting from or across highway.** *Except as provided in 87-2-803(4), no* person shall shoot any firearm from or across the roadway of any state or federal highway or county road."

Section 2. Section 87-2-803, MCA, is amended to read:

"**87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years old or older and who is under 62 years of age.

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(3) Such disabled persons shall carry a permit on a form prescribed by the department. *A disabled person issued a permit under this subsection is entitled to have the department stamp such a permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that he is permanently physically handicapped and nonambulatory or his mobility is substantially impaired.*

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or borrow-pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked on such shoulder, berm, or borrow-pit right-of-way in a manner that will not impede traffic or endanger motorists or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked in an area, not a public highway, where hunting is permitted. Nothing in this subsection allows such disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of such vehicle."

Section 3. Section 87-3-101, MCA, is amended to read:

"87-3-101. General restrictions. *Except as provided in 87-2-803(4), it* is unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird from any self-propelled or drawn vehicle or on or from any public highway in the state of Montana or by the aid or with the use of any set gun, jacklight or other artificial light, trap, snare, or salt lick; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set."

Section 4. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 417

[HB 884]

AN ACT PROVIDING FOR CONSULTATION BETWEEN THE SPONSOR OF A BILL FOR WHICH A FISCAL NOTE HAS BEEN PREPARED AND THE BUDGET DIRECTOR PRIOR TO DISTRIBUTION OF A FISCAL NOTE; PROVIDING FOR A SPONSOR'S FISCAL NOTE; AMENDING SECTION 5-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-204, MCA, is amended to read:

"5-4-204. Submission of fiscal note — sponsor's fiscal note — distribution to legislators. *(1)* A completed fiscal note shall be submitted

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by the budget director to the presiding officer who requested it. *Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor must:*

(a) notify the presiding officer that he concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note, the presiding officer shall refer *the completed fiscal note prepared by the budget director* to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that he concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note, he shall prepare the fiscal note as provided in 5-4-205 and return the completed sponsor's fiscal note to the presiding officer within 4 days of his election to prepare a sponsor's fiscal note.

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(c) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

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CHAPTER NO. 418

[SB 11]

AN ACT REVISING LAWS CONCERNING THE UNIFIED INVESTMENT PROGRAM; REMOVING CERTAIN RESTRICTIONS ON INVESTMENT OF PUBLIC FUNDS AND PROVIDING A "PRUDENT EXPERT" STANDARD FOR INVESTMENT OF PUBLIC FUNDS; AMENDING SECTIONS 17-5-609, 17-5-619, 17-6-201, 17-6-203, 17-6-211, 17-6-305, 17-6-308, AND 17-6-324, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-609, MCA, is amended to read:

"17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds."

Section 2. Section 17-5-619, MCA, is amended to read:

"17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds."

Section 3. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The *unified* investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments and the Montana economic development board in accordance with *Article VIII, section 13, of the Montana constitution and* the *prudent expert principle which requires any investment manager to:*

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund.

(3) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs

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or create new jobs in Montana, if the investment meets the standard of care required by this section. In discharging its duties, the board of investments and the Montana economic development board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board of investments has the sole authority to invest state funds other than the Montana in-state investment fund. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board of investments shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made; and

(d) prepare the claim to pay for the investment.

(6) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(8) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 4. Section 17-6-203, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution and all money referred to in 17-2-102(8). The principal and

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any part thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(6) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 5. Section 17-6-211, MCA, is amended to read:

"17-6-211. Preference to in-state investment firms — commitment agreement with board of housing. *(1)* The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or *financial institutions* which maintain offices in the state and thereby make contributions to the state economy. Further,

due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(2) The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers."

Section 6. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy. (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. The Montana in-state investment fund must be invested *as* authorized by rules adopted by the board."

Section 8. Section 17-6-324, MCA, is amended to read:

"17-6-324. Rulemaking authority. The board may adopt rules to implement the provisions of this part and 17-6-211*(2)*. Rules adopted by the board may include definitions of small- and medium-sized businesses, a method of committing funds to financial institutions, types of service fees, and types of investments to be made. The board may also adopt procedural rules to govern its proceedings."

Section 9. **Extension of authority.** Any existing authority of the board of investments and the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 10. **Coordination instruction.** If Senate Bill No. 10, including the section of that bill amending Article VIII, section 13, of the Montana constitution, is approved by the electorate on November 4, 1986, the word "retirement" appearing three times in 17-6-201(2) is changed to "long-term".

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Section 11. **Effective dates.** (1) Sections 1 through 9 and this section are effective October 1, 1985.

(2) Section 10 is effective January 1, 1987.

Approved April 10, 1985.

CHAPTER NO. 419

[SB 184]

AN ACT TO EXTEND TO JUNE 30, 1987, THE SUNSET PROVISION ON SECTION 2-9-107, MCA, LIMITING DAMAGES RECOVERABLE IN TORT SUITS AGAINST STATE AND LOCAL GOVERNMENTS; AMENDING SECTION 9, CHAPTER 675, LAWS OF 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Termination date.** Section 9, Chapter 675, Laws of 1983, is amended to read:

"Section 9. **Termination date.** Section 2 terminates June 30, *1987.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 420

[SB 284]

AN ACT REVISING PROVISIONS FOR REPAYMENT OF COAL BOARD LOANS; AMENDING SECTION 90-6-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-209, MCA, is amended to read:

"90-6-209. Limitations on grants and loans. (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project, as long as the grant or loan does not extend over more than 10 years and does not exceed reasonable revenue expectations. The total amount of grants and loans to state agencies and Indian tribes may not exceed 7% of the total money allocated to the board during each fiscal year.

(2) (a) No loan may be approved by the board if the source of money for repayment would be derived from property taxes. *Repayment may be made from fees, rentals, admissions, use charges, and special assessments.*

(b) The repayment period for loans approved by the board may not exceed 20 years.

(c) The board shall hold all loan contracts within its administrative offices. The board may not sell, assign, or pledge a loan contract to any other entity.

(d) A local government unit or the governing body of a federally recognized Indian tribe receiving a loan from the board shall use or commit for use the loan money within 1 year of the date of the board's final approval of the loan.

(e) If a local government unit or the governing body of a federally recognized Indian tribe fails to comply with subsection *(2)(d)*, the entire loan must be repaid within 30 days following expiration of the 1-year period.

(3) No loan or grant to an Indian tribe under 90-6-205 may be approved by the board unless, with respect to that loan or grant:

(a) the governing body of the tribe has agreed:

(i) to waive its immunity from suit on any issue specifically arising from the transaction of a loan or grant obtained under this part; and

(ii) to the adjudication of any dispute arising out of the loan or grant transaction in the district court of the first judicial district of the state of Montana; and

(b) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever such approval is necessary."

Section 2. **Extension of authority.** Any existing authority of the coal board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 421

[SB 340]

AN ACT AUTHORIZING CERTAIN INVESTMENTS AND DEPOSITS OF PUBLIC MONEY IN CREDIT UNIONS AND SAVINGS AND LOAN ASSOCIATIONS; AMENDING SECTIONS 7-6-201, 7-6-203, 7-6-206, 7-6-208, 7-6-211, 7-6-4135, 7-7-2104, 7-12-2175, 7-12-4207, 17-6-101, 17-6-102, 17-6-104, 17-6-105, 17-6-211, 19-11-402, 20-9-213, 85-9-604, AND 85-9-629, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-201, MCA, is amended to read:

"7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206(3), *or* 7-6-2701, it shall be the duty

of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, savings and loan associations, *or credit unions* located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, *or credit union* authorized above or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from such bank, building and loan association, savings and loan association, *or credit union* such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, savings and loan association, *or credit union* until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk."

Section 2. Section 7-6-203, MCA, is amended to read:

"7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, savings and loan association, *or credit union* in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, savings and loan association, *or credit union* to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this part."

Section 3. Section 7-6-206, MCA, is amended to read:

"7-6-206. Time deposits — repurchase agreement. (1) Such public money not necessary for immediate use by such county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank, savings and loan association, *or credit union* in the county, city, or town or placed in repurchase agreements as authorized in 7-6-213, and money placed in repurchase agreements is subject to subsections (2) and (3).

(2) When more than one bank, savings and loan association, *or credit union* is available in any county for the time or savings deposit of such county funds or in any city or town for the time or savings deposit of such city or town funds, such funds may be distributed ratably among all of such banks, savings and loan associations, *and credit unions* qualifying therefor

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and substantially in proportion to the total property taxes paid during the preceding year in such county or the county in which such city or town is located and the corporation license taxes paid by each bank, savings and loan association, *or credit union* willing to receive such time or savings deposits under the terms of this part.

(3) In lieu of a ratable distribution among banks, savings and loan associations, *and credit unions* within the county, city, or town, the local governing body may solicit bids without advertising from any bank, savings and loan association, *or credit union* in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public money not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from and deposit public money in such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this subsection shall be considered as meeting the requirements of subsection (2)."

Section 4. Section 7-6-208, MCA, is amended to read:

"**7-6-208. Substitution of deposit security.** (1) Any bank, building and loan association, savings and loan association, *or credit union* pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, savings and loan association, *or credit union*. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, savings and loan association, *or credit union*."

Section 5. Section 7-6-211, MCA, is amended to read:

"**7-6-211. Report by financial institution.** Any bank, building and loan association, savings and loan association, *or credit union* receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, savings and loan association, *or credit union* during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, savings and loan association, *or credit union*; and

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(4) that neither such bank, building and loan association, savings and loan association, *or credit union* nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, savings and loan association, *or credit union.*"

Section 6. Section 7-6-4135, MCA, is amended to read:

"7-6-4135. Investment of money in capital improvement program fund. The money held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank, *savings and loan association, or credit union* insured by the federal deposit insurance corporation, *federal savings and loan insurance corporation, or national credit union administration* or in direct obligations of the United States government and shall be credited back to the fund plus interest earned."

Section 7. Section 7-7-2104, MCA, is amended to read:

"7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board may issue a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and will take the place in order of registration and payment of and supersede the original bond, warrant, or coupon. It must have the word "duplicate" plainly printed across its face.

(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, *credit union,* admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

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(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Section 8. Section 7-12-2175, MCA, is amended to read:

"7-12-2175. Investment of interest and sinking fund money. (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, *savings and loan association, or credit union* insured by the federal deposit insurance corporation, *federal savings and loan insurance corporation, or national credit union administration* or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the sinking fund from which the money was withdrawn."

Section 9. Section 7-12-4207, MCA, is amended to read:

"7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, *savings and loan association, or credit union* insured by the federal deposit insurance corporation, *federal savings and loan insurance corporation, or national credit union administration* or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the sinking fund from which the money was withdrawn."

Section 10. Section 17-6-101, MCA, is amended to read:

"17-6-101. Deposit of funds in the hands of the state treasurer. (1) Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks, building and loan associations, savings and loan associations, *and credit unions* located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) The state treasurer shall deposit funds in such banks, building and loan associations, savings and loan associations, *and credit unions* and in such amounts as may be designated by the board of investments and withdraw such deposits when instructed to by the board of investments.

(3) When moneys have been deposited under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occurring from any cause other than his own neglect or fraud.

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(4) The state treasurer shall withdraw all deposits or any part thereof from time to time to pay and discharge the legal obligations of the state duly presented to him in accordance with the law."

Section 11. Section 17-6-102, MCA, is amended to read:

"17-6-102. Insurance on deposits. (1) No such deposits in excess of the amount insured by the federal deposit insurance corporation, federal savings and loan insurance corporation, *or national credit union administration* shall be made unless the bank, building and loan association, savings and loan association, *or credit union* first delivers to the state treasurer or deposits in trust with some solvent bank, as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, *or credit union* pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository *financial institution* a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository *financial institution.*"

Section 12. Section 17-6-104, MCA, is amended to read:

"17-6-104. Interest on deposits — conformity with federal law. (1) The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, *credit unions,* and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, federal savings and loan insurance corporation, *national credit union administration,* or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, *or credit unions* of this state may be members or debtors."

Section 13. Section 17-6-105, MCA, is amended to read:

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"17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, *or credit unions* located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, savings and loan association, *or credit union* in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Such bank, building and loan association, savings and loan association, *or credit union* shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits shall be made in the name of the state treasurer, shall be subject to withdrawal at his option, and shall draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(6) All money, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected shall be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer."

Section 14. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are

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payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (1)(b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of highest quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (1)(c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, savings and loan associations, and credit unions located in Montana; provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property as provided in this subsection (1)(f) and subsection (5), provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for

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the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund; and

(g) any other investment in any business activity in the state, including activities that continue existing jobs or create new jobs in Montana, provided that investments which do not meet the requirements of subsections (1)(a) through (1)(f) may not, in the aggregate, exceed 10% of the fund from which each such investment is made.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (3)(c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms, *credit unions,* and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(5) The board may invest in mortgage loans financed by the board of housing if the mortgages are not in default and meet the requirements of subsection (1)(f). The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

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(6) The Montana economic development board created in 2-15-1805 may invest the Montana in-state investment fund in any in-state investment authorized by its rules in addition to those investments authorized by this section."

Section 15. Section 19-11-402, MCA, is amended to read:

"19-11-402. Investment of fund by trustees. (1) Subject to the provisions of 19-11-403, when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part thereof in:

(a) time or saving deposits in a solvent bank, building and loan association, savings and loan association, *or credit union* operating in the county where the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association"."

Section 16. Section 20-9-213, MCA, is amended to read:

"20-9-213. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government, payable within 180 days from the time of investment, or in savings or time deposits in a state or national bank, building or loan association, savings and loan association, *or credit union* insured by the FDIC, FSLIC, *or NCUA* located in the county in which the district is located; provided, however, that if no such bank, building and loan association, savings and loan association, *or credit union* is

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located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Section 17. Section 85-9-604, MCA, is amended to read:

"85-9-604. Collection and investment of assessments. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank, *savings and loan association, or credit union* insured by the federal deposit insurance corporation, *federal savings and loan insurance corporation, or national credit union administration* or in direct obligations of the United States government payable within 180 days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, 5% of the interest shall be deposited in the general fund of the county."

Section 18. Section 85-9-629, MCA, is amended to read:

"85-9-629. Disposition and investment of sale proceeds. (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

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(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank, *savings and loan association, or credit union* insured by the federal deposit insurance corporation, *federal savings and loan insurance corporation, or national credit union administration* or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed 180 days from the time of deposit or investment."

Approved April 10, 1985.

CHAPTER NO. 422

[SB 409]

AN ACT RELATING TO MEDICAL EXAMINATIONS AND EXPENSES OF WORKERS' COMPENSATION CLAIMANTS; AMENDING SECTIONS 39-71-605 AND 39-71-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician *or panel of physicians*, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician *or panel of physicians* selected by the division or any member or examiner or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician *or panel of physicians* employed by the employer, the insurer, or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

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(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of his injury or disability, if any, the division, at the request of the claimant, employer, or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or *panel of* physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician *or panel of physicians* making the examination shall file a written report of findings with the division for its use in the determination of the controversy involved. The division shall pay the physician *or panel of physicians* for the examination and shall be reimbursed by the party who requested it."

Section 2. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) *A relative value fee schedule* for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established *annually* by the workers' compensation division *and become effective* in January of each year. *The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules shall be modeled on the 1974 revision of the 1969 California Relative Value Studies.*"

Section 3. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

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CHAPTER NO. 423

[HB 185]

AN ACT REQUIRING THE DEPARTMENT OF HIGHWAYS TO ERECT SIGNS INDICATING ROUTES TO POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Vocational-technical center signs — location — specifications.** (1) The department shall design, construct, and erect appropriate signs indicating access routes to each postsecondary vocational-technical center designated in 20-7-311.

(2) The department shall locate each sign at the intersection or exit on the federal-aid highway system offering the nearest or the most practicable route to the postsecondary vocational-technical center concerned.

(3) The style, size, and color of the signs must be consistent with the specifications required for other informational or directional signs installed on the federal-aid highway system.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60 apply to section 1.

Approved April 10, 1985

CHAPTER NO. 424

[HB 216]

AN ACT TO CLARIFY AND REVISE THE USE OF BID AND CONTRACT PERFORMANCE SECURITY IN STATE PROCUREMENTS OF SUPPLIES AND SERVICES; AMENDING SECTIONS 18-1-201 AND 18-4-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-201, MCA, is amended to read:

"18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) *Except as provided in 18-4-312, in* all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant."

Section 2. Section 18-4-312, MCA, is amended to read:

"18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of *services in the amount of $10,000 or less or of* supplies, the department may in its discretion require the filing of:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors*; or*

(c) both bid and contract performance security.

(2) For state contracts for the procurement of services exceeding $10,000, the department shall require bid security and contract performance security, except for purchases described in 18-4-305 and 18-4-306.

(3) If security is required under subsection (1) *or (2)*, the following types of security may be required to be deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

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(4) The amount and type of the security mentioned above must be determined by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than *10% of the bid price for bid security and* 25% of the total contract price *for contract performance security*, and must be payable to the state of Montana. In determining the amount and type of *contract performance* security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. *In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract; such considerations shall include but are not limited to the type of supply or service being procured, dollar amount of the proposed contract, or delivery time requirements.* The department may adopt rules to assist it in making *these determinations* and in protecting the state in dealing with irrevocable letters of credit. *Bid and* contract security requirements must be included in the invitations for bids or requests for proposals.

(5) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit his bid security to the state and become immediately liable on the bid bond, but not in excess of the sum stated therein. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond shall not exceed the amount specified in the invitation for bid or request for proposal.

(6) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(7) The provisions of *Title 18, chapter 1, part 2, and Title 18,* chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 10, 1985.

CHAPTER NO. 425

[HB 239]

AN ACT TO ALLOW FOR THE FORMATION OF MULTIJURISDICTIONAL SERVICE DISTRICTS AMONG MUNICIPALITIES AND COUNTIES TO PROVIDE CERTAIN SERVICES ALLOWED TO BE PROVIDED BY LOCAL GOVERNMENTS; PROVIDING FOR THE CREATION, ADMINISTRATION, AND FINANCING OF SUCH DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to form multijurisdictional service district.** Municipalities and counties may form multijurisdictional service districts to provide:

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(1) a higher level of service than is available through the local governments forming such a district; or

(2) services that are not available through the governments forming such a district.

Section 2. **Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails; and

(e) dog control programs.

Section 3. **Administration.** (1) A multijurisdictional service district must be administered according to an interlocal agreement among the participating jurisdictions within the district.

(2) The governing body of a multijurisdictional service district may consist of the entire membership of all governing bodies of the participating jurisdictions, or it may be a joint board with representation as set forth in the interlocal agreement forming the district.

(3) An interlocal agreement under [this act] may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

(4) A library established under [this act] as a multijurisdictional service must be administered according to the provisions of 22-1-305 through 22-1-317.

Section 4. **Financing.** (1) Local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in [section 6], and to appropriate funds derived from other than general tax revenues for the operation of the district. Property taxes levied for a library established under [this act] as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district must, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on such property.

Section 5. **Creation of district.** (1) A multijurisdictional service district is established by an interlocal agreement among participating jurisdictions, as authorized by an ordinance of each of the jurisdictions, to form

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the district. An ordinance, for the purposes of [this act], includes a resolution of a county not having the power to enact ordinances.

(2) The authorizing ordinance may be passed by the governing body of the jurisdiction or it may be initiated by a petition signed by 15% of the resident property taxpayers of the area proposed for the district in each jurisdiction.

(3) Prior to determining the boundary of the district, the governing body or persons preparing a petition shall consult with the county election administrator to prepare a description of the boundary of the proposed district. As far as practical, the boundary shall follow precinct, school district, municipal, and county lines. The boundary description must be mapped and clearly described.

Section 6. **Ordinance and petition requirements.** An ordinance or petition for an ordinance to authorize a multijurisdictional service district must include:

(1) the name of the proposed district;

(2) the services to be provided by the proposed district;

(3) a statement of convenience and necessity;

(4) a boundary map of the proposed district;

(5) estimated costs of services and methods of financing the district;

(6) the method of administering the proposed district; and

(7) the maximum property tax mill levy for property taxes in the district.

Section 7. **Adoption of ordinance — protest.** (1) Upon receipt of a petition to enact an authorizing ordinance, the governing body of each jurisdiction may either adopt the substantive provisions of the petition as an ordinance or decline to adopt an authorizing ordinance for the district. The action on the petition is subject to the provisions of initiative and referendum as provided in 7-5-131 through 7-5-137.

(2) (a) Upon adoption of a multijurisdictional service district authorizing ordinance, notice must be published in a newspaper of general circulation in the jurisdiction.

(b) Each notice must set forth the text or substance of the ordinance and the text of subsection (2)(c).

(c) Within 30 days of the publication of the notice, electors or property owners of each portion of the proposed district may submit written protests to the local government clerk. If more than 50% of the electors, or the owners of more than 50% of the taxable value of the property, in the affected portion of any one of the jurisdictions proposed for inclusion in the district protest the ordinance of that jurisdiction, the ordinance is void.

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Section 8. **Coordination instruction.** If House Bill No. 496 is passed and approved, section 2(2)(a) of this act is amended to read: "recreation programs other than park and recreation programs in a county park district established under [House Bill No. 496]".

Approved April 10, 1985.

CHAPTER NO. 426

[HB 260]

AN ACT PROVIDING A FORMULA FOR ALLOCATING MONTANA'S PRIVATE ACTIVITY BOND AUTHORITY AMONG THE GOVERNMENTAL UNITS IN THE STATE HAVING AUTHORITY TO ISSUE SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature has previously authorized state agencies and cities, towns, and counties to issue bonds to support a wide variety of activities in furtherance of various public purposes; and

WHEREAS, the federal government has enacted the Tax Reform Act of 1984, hereinafter referred to as "the Act"; and

WHEREAS, the Act restricts the total principal amount of private activity bonds that may be issued by the state during each calendar year to $200 million; and

WHEREAS, the Act defines "private activity bond" as meaning certain obligations the interest on which is exempt from tax under section 103(b) of the Internal Revenue Code of 1954, as amended, and that are industrial development bonds or student loan bonds; and

WHEREAS, the Act distributes one-half of the private activity bond limit to the state agencies that have authority to issue private activity bonds and the other one-half to local political subdivisions that have authority to issue private activity bonds on the basis of the relative populations of the local political subdivisions; and

WHEREAS, the Act applies to private activity bonds issued after December 31, 1983; and

WHEREAS, the provisions of the Act authorize the Governor to reallocate the limit among the issuing authorities of the state through an alternative method on an interim basis; and

WHEREAS, pursuant to that authority the Governor has adopted such an interim allocation procedure for calendar years 1984 and 1985; and

WHEREAS, the Act authorizes the Legislature to enact an allocation procedure on a permanent basis different from that specified in the Act; and

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WHEREAS, the Legislature considers it to be in the best interests of the state to enact an allocation procedure different from that specified in the Act for calendar year 1986 and subsequent calendar years.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Private Activity Bond Allocation Plan".

Section 2. **Definitions.** As used in [this act], unless the context clearly requires otherwise, the following definitions apply:

(1) "Department" means the department of administration provided for in 2-15-1001.

(2) "Limit" or "private activity bond limit" means the total state ceiling applicable to the state of Montana for any calendar year for the issuance of tax exempt private activity bonds, as determined under the provisions of the reform act.

(3) "Private activity bond" means a tax-exempt private activity bond, as defined under the provisions of the reform act.

(4) "Reform act" means the federal Tax Reform Act of 1984 and particularly subtitle B of Title VII thereof, entitled "Private Activity Bonds", which are a part of the federal Deficit Reduction Act of 1984 (Public Law 98-369).

(5) "State issuer agencies" means those state agencies authorized by state law to issue bonds that would qualify as private activity bonds.

Section 3. **Private activity bond limit.** The aggregate amount of private activity bonds that may be issued by state issuer agencies and local political subdivisions during any calendar year may not exceed the private activity bond limit for that calendar year.

Section 4. **Allocation of limit.** The private activity bond limit is allocated among the state issuer agencies and local political subdivisions of the state as follows:

(1) 40% of the limit to the state issuer agencies;

(2) 60% of the limit to local political subdivisions.

Section 5. **Determination of state issuer agencies' allocations.** The state issuer agencies' allocations of the limit must be made by the director of the department.

Section 6. **Determination of local political subdivisions' allocations.** (1) Local political subdivisions wishing to obtain an allocation of the limit shall apply to the department for an allocation. The application must contain the following information:

(a) the name of the local political subdivision;

(b) a description of the proposed project;

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(c) the location of the project;

(d) the name and address of the project owner and operator;

(e) a certified copy of the inducement resolution adopted by the local political subdivision pursuant to section 103 of the Internal Revenue Code of 1954, as amended, approving the project and granting preliminary authorization for the issuance of the bonds for the project;

(f) the preliminary opinion of a qualified bond counsel that the proposed project qualifies as a private activity bond project under applicable state law and, if the bonds are issued, that the interest thereon will be exempt from federal income taxation under section 103 of the Internal Revenue Code of 1954, as amended;

(g) evidence that all public hearing requirements concerning the proposed project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution stating in effect that in its opinion the project is feasible, that bonds could be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion; and

(i) the amount of allocation requested.

(2) Allocations to local political subdivisions must be made by the department on the basis of the chronological order of the receipt of their completed applications. Completed applications received on the same day by the department must be ranked according to the earliest inducement resolution date.

Section 7. **Limitation on local political subdivision allocations.** Prior to the first Monday in October of a calendar year, the maximum single project allocation of the limit that may be approved for a local political subdivision, except as may otherwise be limited by the reform act, may not exceed $15 million.

Section 8. **Notification of approval or disapproval by the department.** Upon receipt of an application for an allocation of the limit, the department shall notify the applicant of the approval of the allocation or the reasons for disapproval as soon as possible.

Section 9. **Term of allocations.** (1) Unless terminated earlier by the state agency or local political subdivision involved, an allocation of the limit is valid for 90 days from the date the department's notice of approval is mailed. The department may extend the period of validity for an additional 30 days upon presentation of evidence to it prior to the expiration of the 90-day period that an agreement to purchase the allocated private activity bonds has been obtained from an entity with the legal ability to purchase them.

(2) If the allocated private activity bonds are not issued within the period of validity, as determined under subsection (1), the allocation automatically expires and is thereafter subject to reallocation.

(3) All allocations for a calendar year expire on December 31 of that year; however, this subsection does not limit the term of an allocation that

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is carried forward by the state agency or local political subdivision involved, with respect to a carry forward project as defined in the reform act and proposed and temporary U.S. treasury regulations for private activity bond allocation as published in the Federal Register on October 5, 1984.

Section 10. **Allocations not transferable.** Allocations of the limit may not be transferred between projects.

Section 11. **Reapplication.** If the department disapproves an application for an allocation of the limit or if an allocation expires under [section 9], the state agency or local political subdivision involved may reapply for an allocation. The reapplication must be reviewed as any other application by the department, according to the chronological order of its receipt. No priority or preference may be given to a reapplication because of the prior application.

Section 12. **Unused or recaptured allocations.** (1) On the third Monday in August of each calendar year any unallocated limit remaining must be pooled by the department and must thereafter be available for state issuer agencies and local political subdivisions alike as provided in [sections 5 and 6] except that the $15 million limitation on local political subdivision allocations under [section 7] continues in effect.

(2) On the first Monday in October of each calendar year any unallocated limit remaining in the pool is available to state issuer agencies and local political subdivisions alike as provided in [sections 5 and 6] with no limitation on the amount of allocation that can be made for an individual project other than the limitations imposed by the reform act and the Internal Revenue Code of 1954, as amended.

(3) For purposes of this section, an application from a state issuer agency for an allocation must contain the information required in [section 6] for a local political subdivision application and must be approved and ranked by the department in the manner provided by [section 6(2)].

Section 13. **Effective date.** This act is effective January 1, 1986.

Approved April 10, 1985.

CHAPTER NO. 427

[HB 491]

AN ACT RELATING TO MOTOR VEHICLE WRECKING FACILITIES' JUNK VEHICLE RECORDS AND REQUIREMENTS FOR REPORTING TO THE DIVISION OF MOTOR VEHICLES; AMENDING SECTIONS 75-10-512 AND 75-10-513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-512, MCA, is amended to read:

"75-10-512. Records required of facilities. (1) Every motor vehicle wrecking facility shall maintain books or files in which are kept a record

and description of every junk vehicle obtained by it, together with the name *and address* of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of *ownership*, sheriff's certificate of sale, *notarized bill of sale* from the former owner, *or sheriff's release*;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the motor or identification number or serial number;

(e) the date purchased;

(f) the disposition of *the vehicle.*"

Section 2. Section 75-10-513, MCA, is amended to read:

"**75-10-513. Disposal of junk vehicles — fees and records.** *(1)* When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each wrecking facility shall mail to the division of motor vehicles a list, on a form approved by the division, of all junk vehicles received during the quarter, stating the year, make, and the complete identification number of each vehicle. Any certificate of ownership received for junk vehicles must accompany each list. The division shall issue a receipt of the certificate of ownership if requested by the licensed facility and such receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 3. **Extension of authority.** Any existing authority of the department of health and environmental sciences or the department of justice, division of motor vehicles, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 10, 1985.

CHAPTER NO. 428

[HB 492]

AN ACT TO CLARIFY THE RESPONSIBILITY OF A MOTOR VEHICLE DEALER REGARDING PROVISION OF INFORMATION TO THE COUNTY TREASURER AND MOTOR VEHICLES DIVISION UPON TRANSFER OF A NEW MOTOR VEHICLE BY THE DEALER; AMENDING SECTION 61-4-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-112, MCA, is amended to read:

"**61-4-112. New motor vehicles — transfers by dealers.** *(1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:*

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(a) issue and affix a sticker as prescribed in 61-4-111(1)(a) for transfers of used motor vehicles and retain a copy of the sticker;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the sticker issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502(7)(b).

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the division shall issue a certificate of ownership and certificate of registration together with a statement of lien as provided in 61-3-202."

Approved April 10, 1985.

CHAPTER NO. 429

[HB 520]

AN ACT CLARIFYING THAT THE PUBLIC DOES NOT HAVE THE RIGHT TO MAKE RECREATIONAL USE OF WATERS THAT HAVE BEEN DIVERTED FOR PURPOSES OF APPROPRIATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Recreational use of diverted surface waters prohibited.** The right of the public to make recreational use of surface waters does not include the right to make recreational use of the following surface waters without permission or contractual arrangement with the owner:

(1) irrigation and drainage canals and ditches;

(2) manmade flood control channels;

(3) municipal, industrial, and domestic water systems, excluding the lakes, streams, and reservoirs from which the systems obtain water;

(4) hydroelectric power inlet and discharge facilities; or

(5) any other waters while they are diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access.

Approved April 10, 1985.

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CHAPTER NO. 430

[HB 687]

AN ACT TO ALLOW THE ADOPTION OF SCHEDULES FOR THE RETENTION OF FINANCE-RELATED RECORDS OF COUNTIES AND MUNICIPALITIES RATHER THAN REQUIRING RETENTION FOR SPECIFIC TIME PERIODS; REQUIRING DEPARTMENT OF COMMERCE APPROVAL OF SUCH SCHEDULES; AMENDING SECTIONS 7-5-2132 AND 7-5-4124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2132, MCA, is amended to read:

"7-5-2132. Destruction of old county records. (1) Upon the order of the board of county commissioners and with the approval of the department of commerce, a county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) *(a) The board of county commissioners may, with the approval of the department of commerce, adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the county. The destruction of such records must be done in accordance with the provisions of such schedules.*

(b) If a schedule has not been adopted and approved under the provisions of subsection (2)(a), such records may be destroyed by any county officer after a period of 25 years."

Section 2. Section 7-5-4124, MCA, is amended to read:

"7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon the order of the city or town council or commission and with the approval of the department of commerce, a city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of commerce after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

(3) *(a) The city or town council or commission may, with the approval of the department of commerce, adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the city or town. The destruction of such records must be done in accordance with the provisions of such schedules.*

(b) If a schedule has not been adopted and approved under the provisions of subsection (3)(a), such records may be destroyed by any city or town officer after a period of 5 years."

Approved April 10, 1985.

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CHAPTER NO. 431

[HB 921]

AN ACT REMOVING THE REQUIREMENT THAT THE MONTANA LAW ENFORCEMENT ACADEMY BE LOCATED AT ONE OF THE UNITS OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 44-10-103 AND 44-10-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-10-103, MCA, is amended to read:

"**44-10-103. Establishment of academy.** There is hereby established a Montana law enforcement academy."

Section 2. Section 44-10-202, MCA, is amended to read:

"**44-10-202. Powers and duties of department.** The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among the qualified applicants those officers who are to attend the academy each year;

(3) determine the curriculum and methods of training for the officers attending the academy;

(4) select and hire such staff as it deems necessary to implement this chapter;

(5) establish rules for the conduct of the officers at the academy;

(6) award appropriate certificates to the officers who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and such other records as the department may deem necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations."

Approved April 10, 1985.

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CHAPTER NO. 432

[SB 91]

AN ACT TO GENERALLY REVISE AND CLARIFY THE PROVISIONS RELATING TO VENUE BY DEFINING WHAT COUNTY IS A PROPER PLACE OF TRIAL FOR VARIOUS PARTIES AND CIVIL ACTIONS; AMENDING SECTIONS 2-9-312, 25-2-101 THROUGH 25-2-106, AND 25-2-108, MCA; AND REPEALING SECTION 25-2-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Scope of part.** The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

Section 2. **Designation of proper place of trial not jurisdictional.** The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

Section 3. **Power of court to change place of trial.** The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

Section 4. **Right of defendant to move for change of place of trial.** If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

Section 5. **Multiple proper counties.** If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

Section 6. **Multiple claims.** In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

Section 7. **Multiple defendants.** If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

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Section 8. Section 25-2-108, MCA, is amended to read:

"25-2-108. Residence of defendant. *Unless otherwise specified in this part:*

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action;

(2) if none of the defendants reside in the state, *the proper place of trial is any county the plaintiff designates in the complaint;*

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action."

Section 9. Section 25-2-101, MCA, is amended to read:

"25-2-101. Contracts. *(1) The proper place of trial for actions* upon contracts *is either:*

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed. *The county in which the contract was to be performed is:*

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurred or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built."

Section 10. Section 25-2-102, MCA, is amended to read:

"25-2-102. Torts. *The proper place of trial for a tort action is:*

(1) The county in which the defendants, or any of them, reside at the commencement of the action; or

(2) The county where the tort was committed. *If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.*"

Section 11. Section 25-2-103, MCA, is amended to read:

"**25-2-103. Real property.** (1) *The proper place of trial* for the following *actions is* the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) *The proper place of trial for all* actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property *is* the county in which the real property, or any part thereof, affected by such action or actions is situated."

Section 12. Section 25-2-104, MCA, is amended to read:

"**25-2-104. Recovery of statutory penalty or forfeiture.** *The proper place of trial* for the recovery of a penalty or forfeiture imposed by statute *is* the county where the cause or some part thereof arose, except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed."

Section 13. Section 25-2-105, MCA, is amended to read:

"**25-2-105. Against public officers or their agents.** *The proper place of trial for an action* against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who, by his command or in his aid, does anything touching the duties of such officer *is* the county where the cause or some part thereof arose."

Section 14. Section 25-2-106, MCA, is amended to read:

"**25-2-106. Against counties.** *The proper place of trial for an* action against a county *is that* county unless such action is brought by a county, in which case any county not a party thereto *is also a proper place of trial.*"

Section 15. Section 2-9-312, MCA, is amended to read:

"**2-9-312. Against state and political subdivisions.** (1) *The proper place of trial for an action* against the state *is* in the county in which the

claim arose or in Lewis and Clark County. In *an action brought by* a resident of the state, the county of his residence *is also a proper place of trial.*

(2) *The proper place of trial for an action* against a political subdivision *is* in the county in which the *claim* arose or in any county where the political subdivision is located."

Section 16. **Specific statutes control.** The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

Section 17. **Repealer.** Section 25-2-107, MCA, is repealed.

Section 18. **Codification instruction.** (1) Sections 1 through 7 and 16 are intended to be codified as an integral part of Title 25, chapter 2, part 1, and the provisions of Title 25, chapter 2, part 1, apply to sections 1 through 7 and 16.

(2) Section 2-9-312 is intended to be recodified as an integral part of Title 25, chapter 2, part 1, and the provisions of Title 25, chapter 2, part 1, apply to 2-9-312 as recodified.

Approved April 11, 1985.

CHAPTER NO. 433

[SB 99]

AN ACT TO LIMIT TO THE IMMEDIATELY PREVIOUS YEAR ANY BACK TAXES OR FEES OWED ON A MOTOR VEHICLE NOT REGISTERED OR OPERATED, REGARDLESS OF THE PERIOD ELAPSED SINCE THE PREVIOUS REGISTRATION; AMENDING SECTIONS 15-8-202 AND 61-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

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(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed *against the vehicle for the current year of registration and the immediately previous year*;

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration and/or the license fee imposed by 61-3-532 *for the current year of registration and the immediately previous year*; or

(iii) in the case of a motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. *The county treasurer may not assess or collect taxes or fees for a period other than:*

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the county treasurer."

Section 2. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment. (1) The department or its agent must, in each year, ascertain and assess all motor vehicles other than automobiles, trucks having a rated capacity of three-quarters of a ton or less, motor homes, travel trailers, or mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide. The motor vehicles

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shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(2) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1."

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to vehicles registered or reregistered after December 31, 1984.

Approved April 11, 1985.

CHAPTER NO. 434

[SB 105]

AN ACT TO REQUIRE CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH INSURANCE IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Child support orders to address health insurance coverage in certain cases.** Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(1) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(2) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(3) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children

of the parties to continue the insurance coverage pending final disposition of the case.

(4) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(5) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to section 1.

Approved April 11, 1985.

CHAPTER NO. 435

[SB 181]

AN ACT TO GENERALLY REVISE AND CLARIFY PROVISIONS RELATING TO LOCAL GOVERNMENT STUDY COMMISSIONS; PROVIDING PROCEDURES FOR HANDLING TIE VOTES AND WRITE-IN CANDIDATES FOR ELECTION TO A STUDY COMMISSION; PROVIDING FOR APPOINTMENT OF EX OFFICIO MEMBERS; CLARIFYING PROVISIONS RELATING TO VACANCIES IN OFFICE; PROVIDING THAT RECOMMENDATIONS FOR SERVICE CONSOLIDATIONS AND TRANSFERS MAY BE MADE TO THE ELECTORATE; AMENDING SECTIONS 7-3-176 THROUGH 7-3-178, 7-3-185, 7-3-187, AND 7-3-190, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-176, MCA, is amended to read:

"7-3-176. Election of commission members. (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study commission shall be held in conjunction with the 1984 general election date or at the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 60 days before the date of the election shall be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates shall be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study *commissioners.*

(3) Candidates for study commission positions shall be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

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(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, *which includes votes cast for candidates who have officially filed nominations and votes for write-in candidates,* shall be declared elected. *If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.*

(5) If the number of study commissioners elected is not equal to the number required to be selected, the chairman of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. No elected official of the local government may be appointed."

Section 2. Section 7-3-177, MCA, is amended to read:

"7-3-177. Composition of study commission. (1) The number of positions, which must be an odd number of not less than three, on the study commission shall be set out in the resolution or petition calling for the election on the question of reviewing the local government or local governments and establishing a study commission. If the election is called under the provisions of 7-3-173(1)(c), the study commission shall consist of three members unless the local governing body by resolution declares that a larger number shall be elected.

(2) Every study commission shall include as an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body. *The ex officio member must be appointed prior to the organization of the study commission provided for in 7-3-179.*"

Section 3. Section 7-3-178, MCA, is amended to read:

"7-3-178. Term of office — vacancies — compensation. (1) The term of office of study commission members begins on the day their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

(2) *A vacancy on a study commission, including an ex offico member vacancy, shall be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy* on a study commission shall be filled by appointment by the governing body of the local government being studied by the commission. *The appointment shall be made within 30 days of the date the vacancy occurs.*

(3) Members of the study commission may receive no compensation other than for actual and necessary expenses incurred in their official capacity."

Section 4. Section 7-3-185, MCA, is amended to read:

"7-3-185. Scope of study commission recommendations. (1) *(a)* A study commission *examining* the government of a county may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation or amendments to an existing consolidation;

(v) in cooperation with a study commission in an adjoining county, recommend county merger; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (1)(a), a county study commission may recommend service consolidation or transfer in cooperation with a study commission of another county or with a study commission of one or more municipalities.

(2) *(a)* A study commission *examining* the government of a municipality may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation;

(v) recommend disincorporation; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (2)(a), a municipal study commission may recommend service consolidation or transfer in cooperation with:

(i) a county study commission;

(ii) a county study commission and one or more municipal study commissions; or

(iii) one or more municipal study commissions."

Section 5. Section 7-3-187, MCA, is amended to read:

"7-3-187. Final report. (1) Every study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report shall contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which may be held in conjunction with a regularly scheduled election, at which the

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alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report shall contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report shall so indicate.

(4) The study commission shall file *two copies* of the final report with the department of *commerce, one of which the department shall forward to the state library.* A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report are to be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 6. Section 7-3-190, MCA, is amended to read:

"7-3-190. Supplementary reports. A study commission may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and indicate potential areas for interlocal agreements. *Such reports shall be submitted to all appropriate governing bodies for reaction within 1 year."*

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1985.

CHAPTER NO. 436

[SB 334]

AN ACT REVISING THE NONGAME WILDLIFE CHECKOFF PROVISIONS ON THE STATE INCOME TAX FORM; ALLOWING THE DEPARTMENT OF REVENUE TO DEDUCT FROM COLLECTIONS FROM THE CHECKOFF FOR THE NONGAME WILDLIFE PROGRAMS THE ADMINISTRATIVE COSTS OF THE PROGRAMS FOR FISCAL YEARS 1986 AND 1987; AMENDING SECTIONS 15-30-150 AND 87-5-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-150, MCA, is amended to read:

"15-30-150. (Temporary) Voluntary checkoff for nongame wildlife programs. (1) Each individual taxpayer who is required to file an

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income tax return under Title 15, chapter 30, may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department of revenue shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs. The provision shall be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to *contribute, in addition to your existing tax liability,* _____$5, _____$10, *or* _____*(specify an amount)* to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to *contribute, in addition to your existing tax liability,* _____$5, _____$10, *or* _____*(specify an amount)* for the same purpose.

(3) Money received under this section must be deposited in the nongame wildlife account established by 87-5-121. **(Terminates December 31, 1987—sec. 7, Ch. 627, L. 1983.)"**

Section 2. Section 87-5-121, MCA, is amended to read:

"87-5-121. (Temporary) Nongame wildlife account. (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-150 *and all interest earned by the fund before being expended under this section* must be deposited in the account, except as provided in subsection (6).

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that no money collected under 15-30-150 may be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

(5) Money derived from tax checkoff contributions to the account will replace license fee funding for nongame wildlife programs after June 30, 1985, and may not be used to replace money that would otherwise be appropriated for nongame wildlife programs.

(6) The department of revenue may deduct from collections an amount not to exceed *$7,884* in fiscal year *1986* and *$7,884* in fiscal year *1987* for

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administering the voluntary checkoff program. The department is authorized to spend the amounts and hire necessary personnel and shall provide an itemized accounting to the *legislative finance committee* of the cost of administering the checkoff program during fiscal years *1986* and *1987*. **(Terminates December 31, 1987—sec. 7, Ch. 627, L. 1983.)"**

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 11, 1985.

CHAPTER NO. 437

[SB 343]

AN ACT TO PROVIDE FOR A 5-YEAR STATUTE OF LIMITATIONS FOR THE PUBLIC CONTRACTORS FEES AND TAX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statute of limitations.** (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a public contractor's gross receipts tax return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the 5-year period, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue determines the existence of the overpayment and approves the refund or credit thereof. If the taxpayer agrees in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If the return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery by the department of the fraud.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 50, and the provisions of Title 15 apply to section 1.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date — applicability.** (1) This act is effective on passage and approval and, except as provided in subsection (2), applies retroactively within the meaning of 1-2-109 to taxable periods covered by returns due after December 31, 1982.

(2) Subsection (3) of section 1 is retroactively applicable within the meaning of 1-2-109 for all taxable years prior to the effective date of this act.

Approved April 11, 1985.

CHAPTER NO. 438

[SB 372]

AN ACT TO REQUIRE THE COUNTY TREASURER TO INVEST THE MONEY OF ANY DISTRICT AS DIRECTED BY THE TRUSTEES OF THE DISTRICT WITHIN 3 WORKING DAYS OF SUCH DIRECTION; AMENDING SECTION 20-9-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

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(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; and

(g) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district *within 3 working days of such direction*;

(10) give each month to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance; and

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(11) remit promptly to the state treasurer receipts for the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1985.

CHAPTER NO. 439

[HB 26]

AN ACT PERMITTING LOCAL GOVERNING BODIES TO GRANT TAX BENEFITS FOR THE RECONSTRUCTION OR EXPANSION OF EXISTING BUILDINGS OR STRUCTURES; AMENDING SECTION 15-24-1501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1501, MCA, is amended to read:

"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Remodeling, *reconstruction, or expansion* of existing buildings or structures, *which increases their taxable value by at least 2 ½% as determined by the department of revenue or its agents,* may receive tax benefits during the construction period and for the following 5 years in accordance with *subsections (2) and (3) and* the following schedule. The percentages shall be applied *only as provided in subsection (3) and are limited* to *the* increase in taxable value caused by remodeling, *reconstruction, or expansion*:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to *confer* the tax benefits described in subsection (1), the governing body of *the affected* county or, *if the construction will occur within an* incorporated city or town, *the governing body of such incorporated city or town* must *approve* by resolution *for each remodeling, reconstruction, or expansion project* the use of the schedule provided for in subsection (1).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. In no case may the benefit described in subsection (1) apply to statewide levies."

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Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 11, 1985.

CHAPTER NO. 440

[HB 332]

AN ACT REVISING THE PENALTY FOR VIOLATION OF LAWS RELATING TO INSURANCE RESPONSIBILITY OF VEHICLE OWNERS; PROVIDING FOR PUNISHMENT OF VIOLATIONS BY A FINE NOT EXCEEDING $250 OR IMPRISONMENT IN A COUNTY JAIL FOR NOT MORE THAN 10 DAYS, OR BOTH; AMENDING SECTION 61-6-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-304, MCA, is amended to read:

"**61-6-304. Penalties.** It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the division of motor vehicles as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable by a fine not to exceed $250 *or by imprisonment in the county jail for not more than 10 days, or both.*"

Approved April 11, 1985.

CHAPTER NO. 441

[HB 352]

AN ACT AMENDING SECTION 3-5-302, MCA, TO EXPAND THE CONCURRENT ORIGINAL JURISDICTION THAT THE DISTRICT COURT HAS WITH THE JUSTICE'S COURT IN CERTAIN CRIMINAL CASES AMOUNTING TO MISDEMEANOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-302, MCA, is amended to read:

"**3-5-302. Original jurisdiction.** (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

(a) misdemeanors arising at the same time as and out of the same transaction as a felony *or misdemeanor offense charged in district court*;

(b) misdemeanors resulting from the reduction of a felony *or misdemeanor* offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony *or misdemeanor* case *tried in district court.*

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days."

Approved April 11, 1985.

CHAPTER NO. 442

[HB 442]

AN ACT TO PROVIDE THAT A PATERNITY ACTION MAY BE BROUGHT BY THE CHILD UNTIL 2 YEARS AFTER THE CHILD ATTAINS THE AGE OF MAJORITY AND BY AN AGENCY OF THE STATE UNTIL 2 YEARS AFTER AN APPLICATION IS MADE UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT FOR SERVICES TO THE CHILD; AMENDING SECTION 40-6-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-108, MCA, is amended to read:

"40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105 may not be brought:

(a) by the child later than 2 years after the child *attains the age of majority; or*

(b) by a state agency later than 2 years after the first application is made under Title IV-D of the Social Security Act for services to the child.

(4) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(5) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112."

Approved April 11, 1985.

CHAPTER NO. 443

[HB 472]

AN ACT REQUIRING LICENSED HEALTH CARE FACILITIES TO BE INSPECTED ANNUALLY; DELETING THE REQUIREMENT THAT FACILITIES APPLYING FOR LICENSE RENEWAL SUBMIT REPORTS DOCUMENTING THAT THEY MEET MINIMUM STANDARDS; AMENDING SECTION 50-5-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new or renewal application, the *department or its authorized agent shall inspect the facility.*

(2) If the department *determines* that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year.

(3) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(4) The minimum standards which home health agencies must meet in order to be licensed *must* be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(5) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility *must* be open to inspection, and access to all records *must* be granted at all reasonable times."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 11, 1985.

CHAPTER NO. 444

[HB 531]

AN ACT CLARIFYING THE AUTHORITY OF THE DIVISION OF MOTOR VEHICLES TO ISSUE PROBATIONARY LICENSES AND PROVIDING A PENALTY FOR VIOLATION OF RESTRICTIONS SET FORTH THEREON; AMENDING SECTIONS 61-2-302 AND 61-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver improvement program — participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

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(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice.

(9) The division of motor vehicles may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth thereon.

(10) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to him under this section."

Section 2. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) Whenever any person

is convicted of any offense for which chapter 5 makes mandatory the revocation of the operator's or chauffeur's license of such person by the division, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the division and at the same time forward a record of such conviction to the division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the division.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the division a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 61-5-208(2) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license. *Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.*

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the division within 5 days on forms furnished by the division."

Section 3. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 11, 1985.

CHAPTER NO. 445

[HB 721]

AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN BUSINESS AND NONPROFIT CORPORATION LAWS; AMENDING SECTIONS 35-1-213, 35-1-303, 35-1-304, 35-1-911, 35-1-928, AND 35-2-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of

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articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the aggregate number of its shares, issued and unissued, itemized by class and series, if any, within each class, which the corporation has authority to issue at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names, *number, or* addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation, when executed and filed in the manner prescribed in this chapter for articles of amendment, shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of

incorporation, then a statement of the manner in which the same shall be effected."

Section 2. Section 35-1-303, MCA, is amended to read:

"**35-1-303. Registration of corporate name.** (1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its corporate name is not the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter.

(2) The name must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(3) Such registration shall be made by:

(a) filing with the secretary of state:

(i) an application for registration, executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations;

(b) paying to the secretary of state *the required* fee.

(4) Such registration shall be effective until the close of the calendar year in which the application for registration is filed."

Section 3. Section 35-1-304, MCA, is amended to read:

"**35-1-304. Renewal of name registration.** A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying *the required filing fee.* A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year."

Section 4. Section 35-1-911, MCA, is amended to read:

"**35-1-911. Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has

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been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; *and*

(6) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate issued by the department of revenue as required by 35-1-928."

Section 5. Section 35-1-928, MCA, is amended to read:

"**35-1-928. State tax clearance certificate.** No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the *secretary of state*, nor shall the secretary of state file any application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana."

Section 6. Section 35-2-210, MCA, is amended to read:

"**35-2-210. Restated articles of incorporation.** (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall

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contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(b) no statement need be made with respect to the names, *number, or* addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by one original and one copy of a statement executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office; and

(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law."

Section 7. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 11, 1985.

CHAPTER NO. 446

[SB 308]

AN ACT REVISING VOTER REGISTRATION LAWS; AMENDING SECTIONS 13-2-102, 13-2-203, 13-2-301, AND 13-2-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-102, MCA, is amended to read:

"13-2-102. Deputy registrars. (1) A notary public who fulfills the requirements of subsection (4) may be a deputy registrar in the county in which he resides.

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(2) (a) The governing body of each county may at its discretion appoint two or more deputy registrars for each precinct in the county before March 15 of each even-numbered year.

(b) The number of deputy registrars, if appointed, shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the *state.*

(3) Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations.

(4) Each election administrator shall provide training to all deputy registrars in registration procedures and shall issue a certificate to each deputy registrar on successful completion of the training. A deputy registrar may not register voters without a current certificate. All certificates expire on March 15 of each even-numbered year.

(5) Deputy registrars shall forward all completed cards to the county registrar within 3 days. Registration cards properly executed before a deputy registrar prior to the close of registration shall be accepted for 3 days after the close of registration.

(6) Each election administrator shall certify to the secretary of state the names of each deputy registrar to whom a certificate has been issued. The secretary of state shall then compile a list of deputy registrars with current certificates and make that list available to each election administrator and the public."

Section 2. Section 13-2-203, MCA, is amended to read:

"**13-2-203. Registration by mail.** (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which he resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state. *A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information shall be distributed with the mail registration form.*

(3) The elector shall complete, sign, and either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature,

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address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed by the witness or officer before whom signed."

Section 3. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of registration — procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and thereafter the qualified elector is eligible to vote in the next election."

Section 4. Section 13-2-401, MCA, is amended to read:

"13-2-401. Cancellation of registration for failure to vote — reregistration. (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the election administrator shall:

(a) cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;

(b) mark the form of each elector whose registration has been canceled; and

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose registration is canceled may reregister in the same manner as if he were registering for the first time.

(3) The registration of an elector who votes by absentee ballot but whose ballot does not arrive in time to be counted may not be canceled if his ballot is received and rejected by the election administrator within 10 days succeeding the election.

(4) *A* notice of cancellation shall be published on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county once a week for 2 weeks *prior to the date of cancellation.* The notice shall be run in a display advertisement (known as ROP in the

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trade) if in a newspaper or as an announcement if on radio or television and shall be in a form prescribed by the secretary of state. The names of those electors whose registration has been canceled need not be published."

Section 5. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 11, 1985.

CHAPTER NO. 447

[HB 277]

AN ACT ALLOWING COUNTIES TO ESTABLISH AND FILL THE POSITION OF JAIL ADMINISTRATOR OR TO ENTER INTO AGREEMENTS UNDER WHICH PRIVATE PARTIES WILL BUILD, MAINTAIN, OR OPERATE JAILS; PROVIDING FOR FINANCING OF JAILS; AND AMENDING SECTIONS 7-7-2201, 7-7-2203, 7-32-2121, 7-32-2123, 7-32-2132, 7-32-2201, 7-32-2202, 7-32-2204 THROUGH 7-32-2207, 7-32-2209, 7-32-2212, 7-32-2221, AND 7-32-2222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [sections 1 through 4] to allow regional or single-county jails to be built by private industry and leased back to the participating county or counties for operation by the county, collectively by participating counties, or by a private entity with the concurrence of the sheriff or sheriffs involved.

Section 2. **County jails — contracts with private parties.** (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the jail and the incarceration of prisoners;

(b) a performance bond from the private party acceptable to the county;

(c) a promise from the private party to indemnify the county for any damages for which the county is found liable as a result of the operation of the jail;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the county;

(e) minimum standards for the training of jailers and a provision that the private party will ensure such training; and

(f) a provision that the county may immediately terminate the contract for good cause.

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(3) The provisions of Title 7 relating to bids for county contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section.

Section 3. **Requests for contract proposals.** (1) A county seeking to enter into a contract under 7-32-2201 and [section 2] may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of jail services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing jail services. The Montana board of crime control shall maintain a list of persons providing jail services and furnish the list to a county upon request.

(3) In selecting a proposal and awarding a contract, a county need not accept the proposal with the lowest cost.

(4) The county must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the jail services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The county must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the county.

Section 4. **Powers of jail administrators and private party jailers.** A jail administrator or a private party acting as a jailer under an agreement, as provided for in 7-32-2201(2), is responsible for the immediate management and control of the jail subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of such an administrator and corrections personnel employed under his authority include control over prisoners:

(1) within the confines and grounds of the jail; and

(2) outside the jail confines and grounds while transporting any prisoner or in the hot pursuit or apprehension of any escapee.

Section 5. Section 7-7-2201, MCA, is amended to read:

"7-7-2201. Purposes for which general obligation bonds of a county may be issued. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control, and maintain *except that if the bonds are sold to fund a multicounty jail facility, funds so raised may be used in the county in which the multicounty jail facility is located;*

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(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law; making additions to and repairing buildings; and furnishing and equipping the same *except that if the bonds are sold to fund a multicounty jail facility, funds so raised may be used in the county in which the multicounty jail facility is located*;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund, or poor fund when:

(a) there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants; and

(b) the levying of taxes sufficient to pay and retire such warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county."

Section 6. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) *through (4)*, no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the taxable value of the property therein, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) *In addition to the bonds allowed by subsection (1), a* county may issue bonds which, with all outstanding bonds and warrants, will not exceed *25.75%* of the taxable value of *the* property *in the county subject to taxation*, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation *in subsection (1)* shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 7. Section 7-32-2121, MCA, is amended to read:

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"**7-32-2121. Duties of sheriff.** The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein, *unless the jail is operated by a private party under an agreement entered into under 7-32-2201 or by a jail administrator*;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law."

Section 8. Section 7-32-2123, MCA, is amended to read:

"**7-32-2123. Appointment of deputy sheriff to act as jailer.** *A* sheriff *who operates a county jail* may appoint two deputies in counties of the first, second, or third class and one deputy in counties of the fourth, fifth, sixth, or seventh class who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 9. Section 7-32-2132, MCA, is amended to read:

"**7-32-2132. Liability for escape in civil actions.** (1) A sheriff, *jail administrator, or private party jailer* who fails to prevent the escape or rescue of a person *in his custody* arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the sheriff, *jail administrator, or private party jailer* is liable to the plaintiff for the bail.

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(b) When the arrest is on an execution or commitment to enforce the payment of money, the sheriff, *jail administrator, or private party jailer* is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the sheriff, *jail administrator, or private party jailer* is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue *of a person in his custody*, the sheriff, *jail administrator, or private party jailer* may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a sheriff, *jail administrator, or private party jailer* for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff, *jail administrator, or private party jailer.*"

Section 10. Section 7-32-2201, MCA, is amended to read:

"**7-32-2201. County jail required.** (1) A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties it is necessary or desirable to build, provide, or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

(2) A county, or two or more counties acting together, may provide for the jail required by subsection (1) by:

(a) establishing in the county government the position of jail administrator and, with the sheriff's concurrence, hiring a person, who is answerable to the governing body of the county, to fill the position; or

(b) entering into an agreement, with the concurrence of the sheriffs of all participating counties, with a private party under which the private party will provide, maintain, or operate the jail.

(3) The common jails in the several counties of this state are kept by the sheriffs, *jail administrators, or private parties agreeing to act as jailers* of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in subsection (1), such jail shall be kept by the sheriffs of the counties utilizing the common jail on a basis as the sheriffs shall agree, *by a jail administrator hired by the county in which the jail is situated, or by a private party agreeing to act as the jailer.*

(4) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a jail to be erected, furnished, and maintained."

Section 11. Section 7-32-2202, MCA, is amended to read:

"**7-32-2202. Use of jail in contiguous county.** (1) When there is no jail in the county or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment filed with

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the clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county (or any of them) and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the sheriff *of each county, or the* keeper of the designated jail *if the keeper is not the sheriff,* who must receive into his jail all prisoners authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were *the* sheriff, *jail administrator, or private party jailer* of the county for whose use his jail is designated. With respect to the persons so committed, he is deemed the sheriff, *jail administrator, or private party jailer* of the county from which they were removed.

(3) When a jail is erected in the county for the use of which the designation was made or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the sheriff *of each county or the keeper* of the *jail in each county if the keeper is not the sheriff. The keeper of the jail in the designated county* must thereupon remove the prisoners to the jail from which the removal was had."

Section 12. Section 7-32-2204, MCA, is amended to read:

"**7-32-2204. Maintenance of county jail.** *(1)* The county commissioners, *or the private party when provided in an agreement entered into under 7-32-2201(2),* have the *duty* of building, inspecting, and repairing the jail and must take all necessary precautions against escape, sickness, or infection.

(2) The county commissioners must inquire into the security of the jail and the condition of the prisoners every 3 months."

Section 13. Section 7-32-2205, MCA, is amended to read:

"**7-32-2205. Confinement of prisoners.** The sheriff, *jail administrator, or private party jailer* must receive all persons committed to jail by competent authority and provide them with necessary food, clothing, and bedding, for which *sheriffs or jail administrators, but not jailers operating a jail under an agreement provided for in 7-32-2201(2),* shall submit claims for the actual expenses incurred to the board of county commissioners for their determination and, except as provided in 7-32-2207, to be paid out of the county treasury."

Section 14. Section 7-32-2206, MCA, is amended to read:

"**7-32-2206. Confinement of federal prisoners.** (1) The sheriff, *jail administrator, or private party jailer* must receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States until he is discharged according to law, as if he had been committed under process issued under the authority of this state.

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(2) Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States, through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined. Such agreement shall be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county *or to a jailer operating a jail under an agreement provided for by 7-32-2201(2)* the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

(3) A sheriff, *jail administrator, or private party jailer* to whose custody a prisoner is committed as provided in this section is answerable for his safekeeping in the courts of the United States, according to the laws thereof."

Section 15. Section 7-32-2207, MCA, is amended to read:

"7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the sheriff, *jail administrator, or private party jailer* is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court."

Section 16. Section 7-32-2209, MCA, is amended to read:

"7-32-2209. Expenses of persons committed to jail by highway patrol bureau. In the event a person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall, upon claim presented for the county by the clerk and recorder, pay into the county treasury of the county *or to a jailer operating a jail under an agreement provided for in 7-32-2201(2)* the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid out of funds appropriated for that purpose."

Section 17. Section 7-32-2212, MCA, is amended to read:

"7-32-2212. List of prisoners. The sheriff, *jail administrator, or private party jailer* of each county must, on the first Monday in January

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and every 3 months thereafter, return to the county commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding 3 months. In case he fails to do so, the sheriff, *jail administrator, or private party jailer* must not receive any compensation for the sustenance of the prisoners in his custody."

Section 18. Section 7-32-2221, MCA, is amended to read:

"7-32-2221. Segregation of prisoners — confinement of juveniles. (1) Each county jail must contain a sufficient number of rooms to allow the sheriff, *jail administrator, or private party jailer* to separately confine classes of prisoners as may be necessary to the security and safety of those prisoners and the jail.

(2) Persons who are violent, disturbed, or inebriated must not be kept or put into the same room with other prisoners, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

(3) Juveniles may be confined only under conditions that comply with 41-5-306(2)."

Section 19. Section 7-32-2222, MCA, is amended to read:

"7-32-2222. Health and safety of prisoners. (1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff, *jail administrator,* or *private party* jailer must remove them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff, *jail administrator, or private party jailer* to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.

(3) If in the opinion of the sheriff, *jail administrator, or private party jailer* any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay."

Approved April 11, 1985.

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CHAPTER NO. 448

[SB 208]

AN ACT TO PROVIDE LOAN GUARANTY AUTHORITY TO THE AGRICULTURAL LOAN AUTHORITY; CREATING AN AGRICULTURAL LOAN GUARANTY FUND; AMENDING SECTION 80-12-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-12-103, MCA, is amended to read:

"80-12-103. Agricultural loan authority — general powers. The authority may:

(1) retain professional consultants and advisers;

(2) adopt rules governing its procedures;

(3) purchase agricultural loans made by financial institutions;

(4) issue bonds, in accordance with 80-12-301, necessary to provide funds for implementing this chapter;

(5) invest any funds generated by sale of bonds in the permissible investments outlined in 17-6-211 until such time as the funds are needed for any of the authority's other functions;

(6) procure insurance or guaranties in amounts and in the form the authority considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its loan agreements; and

(7) use the assistance and services of the farmers home administration, the production credit association, the federal land bank, or private lenders in approving loans for issuance of bonds."

Section 2. **Loan guaranty program.** (1) The authority may guarantee and make commitments to guarantee payment required by a loan funded under this chapter or any other agricultural loan for which a guaranty has been approved by the authority upon such terms and conditions as the authority may prescribe in accordance with this chapter. In administering the guaranty program, the authority may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, and guidelines.

(2) Guaranties by the authority under this chapter must:

(a) be made for a loan that the authority finds meets the policies and objectives of this chapter;

(b) be made to an applicant for a guaranty approved by the authority;

(c) contain amortization provisions satisfactory to the authority; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance,

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repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the authority determines to be necessary.

(3) The authority is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the agricultural loan guaranty fund and any guaranteed loan or other credit agreement. Such an agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under this chapter.

(4) Any contract of guaranty made by the authority under the authorization of this chapter must provide that claims payable thereunder must be paid from amounts available in the agricultural loan guaranty fund and from amounts available under the terms of any applicable contract or agreement with the financial institution that originated the guaranteed loan. The obligation of the authority to make payments under such a contract is limited solely to such sources and does not constitute a debt or liability of the state. A guaranty contract and any rule or guideline of the authority implementing the guaranty program may contain such other terms, provisions, or conditions as the authority considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of this chapter may be determined on such basis and be payable by such person in such amounts and at such times as the authority determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

Section 3. **Agricultural loan guaranty fund.** (1) The authority shall create an agricultural loan guaranty fund. The fund must be held by a trustee or other fiduciary designated by the authority. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the authority considers necessary to comply with any contract or agreement entered into by the authority under this chapter. The authority may borrow from and deposit in the agricultural loan guaranty fund up to $20,000,000 from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the authority in accordance with guaranty contracts with financial institutions entered into pursuant to this chapter, including without limitation the protection of the

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interest of the authority in loans during periods of delinquency or upon default.

(3) The minimum reserve requirement for the agricultural loan guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under this chapter, but not in excess of the aggregate annual payments due under the loans or other credit agreements guaranteed by the authority. No loan or other credit agreement may be guaranteed by the authority if the amount of money available in the agricultural loan guaranty fund would be less than the miniumum reserve requirement.

(4) In order to assure the maintenance of the agricultural loan guaranty fund, the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the agricultural loan guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the agricultural loan guaranty fund to the minimum reserve requirement. Nothing contained herein shall obligate the legislature to make an appropriation for this purpose.

(5) All amounts remitted to the authority under this section constitute loans to the authority and must be repaid to the state treasury without interest from available operating revenues of the authority in excess of amounts required for the guarantee of loans.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 80, chapter 12, and the provisions of Title 80, chapter 12, apply to sections 2 and 3.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1985.

CHAPTER NO. 449

[SB 214]

AN ACT PERMITTING CERTAIN DENTAL HYGIENISTS TO ADMINISTER LOCAL ANESTHETIC AGENTS; REMOVING THE REQUIREMENT THAT AN APPLICANT FOR A LICENSE TO PRACTICE DENTAL HYGIENE SUBMIT TO AN ORAL INTERVIEW; AMENDING SECTIONS 37-4-401 AND 37-4-402, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-401, MCA, is amended to read:

"37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing

defines and authorizes. *These services include and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents under the direct supervision and authorization of a licensed dentist.* However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations."

Section 2. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in subsections (1), (2), and (3) of 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part *and* a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

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(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 3. **Extension of authority.** Any existing authority of the board of dentistry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective dates.** (1) Sections 2 and 3 and this section are effective on passage and approval.

(2) Section 1 is effective October 1, 1985.

Approved April 12, 1985.

CHAPTER NO. 450

[SB 249]

AN ACT TO TAX CIGARETTES SOLD IN PACKAGES OF MORE THAN 20 CIGARETTES ON A PER CIGARETTE BASIS; AMENDING SECTIONS 16-11-111 AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. *There* is hereby levied, imposed, and assessed and there shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery thereof: 16 cents on each package containing not more than 20 cigarettes and, when packages contain more than 20 cigarettes, then *a tax on each cigarette equal to 1/20th the tax on a package containing not more than 20 cigarettes.*"

Section 2. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the debt service account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional

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amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account 79.75% of all money received from the collection of the excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 3. **Extension of authority.** Any existing authority of the department of revenue, the department of administration, the state treasurer, or the board of examiners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985, or as soon thereafter as the department of revenue certifies to all wholesalers in the state that it has tax insignia available for affixation to packages of cigarettes proposed to be sold in Montana in units of more than 20 cigarettes.

Approved April 12, 1985.

CHAPTER NO. 451

[HB 200]

AN ACT TO EXTEND UNTIL 30 DAYS AFTER OCCUPATION OF THE MONTANA STATE PRISON ADDITION THE EARLY PAROLE PROVISIONS USED TO RELIEVE PRISON OVERCROWDING; CHANGING, AS OF 30 DAYS AFTER COMPLETION OF THE MONTANA STATE PRISON ADDITION, THE POPULATION FIGURES THAT WILL BE APPLIED IN THE EARLY PAROLE PROVISIONS; AMENDING SECTION 46-23-201, MCA; REPEALING SECTION 2, CHAPTER 235, LAWS OF 1983; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable

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probability that the prisoner can be released without detriment to the prisoner or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of *744* by *96* inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection (1).

(4) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (3) do not apply. **(Subsections (3) and (4) terminate July 1, 1985—sec. 2, Ch. 235, L. 1983.)"**

Section 2. **Repealer.** Section 2, Chapter 235, Laws of 1983, is repealed.

Section 3. **Effective dates.** (1) Section 2 and this section are effective on passage and approval.

(2) Section 1 is effective 30 days after the governor declares by executive order that the prison housing units funded in HB 833 of the 48th legislature are occupied.

Approved April 12, 1985.

CHAPTER NO. 452

[HB 315]

AN ACT TO PRORATE TAXES ON COMMON ELEMENTS OF A CONDOMINIUM PROJECT AND COMMON ELEMENTS SERVING LOTS IN A RESIDENTIAL OR COMMERCIAL PROJECT; AMENDING SECTION 70-23-801, MCA; REPEALING SECTIONS 70-23-701 THROUGH 70-23-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Undivided interest in common elements of condominium project.** (1) Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each

unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

(2) Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use.

Section 2. **Common elements serving residential or commercial development.** (1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in [section 1], but not for park areas that serve the lots.

(2) The assessment provisions of subsection (1) are not negated by the existence or formation of a contract between the developer and lot purchasers or an agreement among lot purchasers that would attempt to obligate the developer or an association of lot owners to pay taxes on the common elements.

Section 3. Section 70-23-801, MCA, is amended to read:

"70-23-801. Removal from chapter — recorded instrument — consent of lienholders. All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter."

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Section 4. **Repealer.** Sections 70-23-701 through 70-23-703, MCA, are repealed.

Section 5. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 8, part 5, and the provisions of Title 15 apply to sections 1 and 2.

Section 7. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1985.

Approved April 12, 1985.

CHAPTER NO. 453

[HB 670]

AN ACT TO REQUIRE RECLAMATION OF LAND DISTURBED BY HARD-ROCK TAILING, WASTE ROCK, OR ORE PROCESSING OPERATIONS; AMENDING SECTIONS 82-4-303, 82-4-304, 82-4-335 THROUGH 82-4-337, 82-4-340, 82-4-351, AND 90-6-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, *tailings, waste materials,* or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than

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mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, *reprocessing of tailings or waste materials, or operation of a hard-rock mill.*

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion. siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

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(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining *or reprocessing of tailings or waste materials* that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining or exploration ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any

exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 *relating to exploration and mining. No provision of this part is applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at such a mill that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.*"

Section 3. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit.** (1) No person shall engage in mining, *ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill* or disturb land in anticipation of *those activities* in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of *operations*;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment; and

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of *the operation.*

(2) Except as provided in subsection (3), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives

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written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 4. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with *the operation* and in any case shall be initiated promptly after completion or abandonment of *the operation* on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of *the operation* on that portion of *the* complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

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(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section."

Section 5. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of *operation* within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of *operation* within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to *complete the operation* and shall be valid until the *operation* authorized by

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the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection."

Section 6. Section 82-4-340, MCA, is amended to read:

"82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part."

Section 7. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of *operation* or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor."

Section 8. Section 90-6-302, MCA, is amended to read:

"90-6-302. Definitions. In this part the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

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(3) "Local government unit" means a political subdivision of this state, including a county, city, town, school district, or other special district that provides any of the services referred to in subsection (1)(c) of 90-6-307.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility that will:

(a) employ at any given time at least 100 people; or

(b) cause, or be expected to cause, an increase in estimated population of at least 15% in a local government unit when measured against the average population of the local government unit in the 3-year period immediately preceding the commencement of the construction of the mining facility. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303."

Section 9. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 12, 1985.

CHAPTER NO. 454

[HB 747]

AN ACT AMENDING SECTION 61-5-104, MCA, TO EXTEND THE EXEMPTION FROM THE REQUIREMENT TO POSSESS A MONTANA DRIVER'S LICENSE TO CERTAIN PERSONS ASSOCIATED WITH THE ARMED FORCES OF THE UNITED STATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-104, MCA, is amended to read:

"61-5-104. Exemptions. (1) The following persons are exempt from license hereunder:

(a) any person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) any person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of such a person who holds a valid license issued by another state and who is not employed in Montana except as a member of the armed forces; if a spouse of a member of the armed forces becomes gainfully employed in Montana, such spouse must be licensed as required by 61-5-102 within 90 days of becoming so employed;

(c) any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign

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country by the armed forces of the United States, for a period of 45 days from the date of his return to the United States;

(d) any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(2) A nonresident who is at least 15 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

(3) A nonresident who is at least 18 years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state.

(4) Any nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

(5) A driver's license issued hereunder to any person who enters the United States armed forces, if valid and in force and effect at the time such person enters the service, shall continue in full force and effect so long as such service shall continue unless such license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which holder of such driver's license is honorably separated from such service. During said 30-day period, such license shall be valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave, or furlough papers in his immediate possession."

Approved April 12, 1985.

CHAPTER NO. 455

[HB 818]

AN ACT AUTHORIZING A COUNTY TO CONTRIBUTE MONEY FROM THE MILL LEVY FOR THE SUPPORT OF MUSEUMS TO PUBLIC MUSEUMS NOT OWNED BY THE COUNTY; AMENDING SECTIONS 7-16-2202 AND 7-16-2205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2202, MCA, is amended to read:

"7-16-2202. Establishment and acquisition of museums. The board of county commissioners of each county of the state, in addition to all other powers now conferred upon them, shall have authority to:

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(1) establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to such museums and collections; *and*

(2) contribute to publicly owned museums not owned by the county."

Section 2. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy for support of museums.** (1) The board of county commissioners of any county owning, acquiring, *or contributing to* any museum or collection of exhibits *as set forth in 7-16-2202*:

(a) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support thereof; and

(b) to meet and take care of such appropriation, may annually levy a tax not to exceed 2 mills on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy shall be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used, *at the discretion of the board of county commissioners,* solely for the purpose for which such levy was made."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved April 12, 1985.

CHAPTER NO. 456

[HB 858]

AN ACT TO ESTABLISH LOCAL AND REGIONAL PORT AUTHORITIES; TO PROVIDE FOR A TAX LEVY FOR THE OPERATION THEREOF; TO PROVIDE FOR PORT COMMISSIONERS; TO PROVIDE FOR THE GENERAL POWER OF A PORT AUTHORITY; TO PROVIDE FOR ISSUANCE OF BONDS AND FOR ESTABLISHMENT OF OPERATION AND USE PRIVILEGES; TO PROVIDE FOR RULES IN CONNECTION WITH A PORT AUTHORITY; TO PROVIDE FOR ACCEPTANCE OF FEDERAL AID FOR PORTS; AND TO PROVIDE FOR COUNTY AND MUNICIPAL COOPERATION IN REGARD TO PORT OPERATION; AMENDING SECTION 67-10-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Local port authority.** (1) Any county or municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a local port authority, authorized to exercise its

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functions upon the appointment and qualification of the first commissioners thereof. Such a governing body may by resolution determine to exercise any or all powers granted to such authorities in [sections 1 through 17], unless such powers have been conferred upon a local or regional port authority.

(2) Upon the adoption of a resolution creating a local port authority, the governing body of the county or municipality shall, pursuant to the resolution, appoint not less than five persons as commissioners of the authority. The commissioners who are first appointed must be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner must be appointed for a term of 5 years, except that vacancies occurring other than by expiration of a term must be filled for the unexpired term by the governing body.

Section 2. **Regional port authority.** (1) Two or more local governments may by joint resolution create a public body, corporate and politic, to be known as a regional port authority. The resolution creating a regional port authority must create a board of not less than five commissioners. The number to be appointed, their term, and their compensation, if any, must be provided for in the resolution. Each such regional port authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure.

(2) A regional port authority may be increased from time to time to serve one or more additional counties or municipalities if each additional local government, each of the local governments then included in the regional authority, and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto. However, if a local port authority for any local government seeking to be included in the regional authority is then in existence, the commissioners of the local authority must consent to the inclusion of the county or municipality in the regional authority; upon the inclusion of such local government in the regional authority, all rights, contracts, obligations, and real and personal property of the local authority must be in the name of and vest in the regional authority.

(3) A regional port authority may be decreased if each of the local governments then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A county or municipality may not adopt any resolution authorized by this section without a public hearing thereon. Notice must be given at least 10 days prior to the hearing in a newspaper published in the county or municipality or, if there is no newspaper published therein, in a newspaper having general circulation in the county or municipality.

(5) For the purpose of [sections 1 through 17], a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations, as provided by the laws of this state.

Section 3. **Commissioners.** (1) The powers of each authority are vested in the commissioners thereof. A majority of the commissioners of an

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authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the authority.

Section 4. **Functions — public and governmental.** The acquisition of any land or interest therein pursuant to [sections 1 through 17], the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ports and transportation and storage facilities, and the exercise of any powers granted to port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in [sections 1 through 17], must be used for public and governmental purposes and as a matter of public necessity.

Section 5. **Cooperation of county or municipality.** For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of ports and facilities pursuant to [sections 1 through 17], any county or municipality for which an authority has been created upon such terms, with or without consideration, as it may determine may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the county or municipality for port purposes be transferred or paid directly to the port authority as such funds become available to the county or municipality;

(3) cause water, sewer, or drainage facilities or any other facilities that it is empowered to provide to be furnished adjacent to or in connection with such ports or facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such port or facilities;

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(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of ports and facilities; and

(7) enter into agreements with the authority respecting action to be taken by the county or municipality pursuant to the provisions of this section.

Section 6. **General powers of authority.** An authority has all the powers necessary or convenient to carry out the purposes of [sections 1 through 17], including but not limited to the power to:

(1) certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of [sections 1 through 17];

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect ports and transportation and storage facilities. For such purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest therein, including easements.

(5) establish comprehensive port zoning regulations in accordance with the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing ports and transportation and storage facilities. However, an authority may not acquire or take over any port or transportation and storage facility owned or controlled by another authority, county, municipality, or public agency without the consent of such authority, county, municipality, or public agency.

Section 7. **Rules.** An authority may adopt, amend, and repeal such reasonable resolutions, rules, and orders as it considers necessary for the management, government, and use of any port or transportation and storage facility owned by it or under its control. No rule, order, or standard prescribed by the commission may be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority a copy of all its rules for public inspection.

Section 8. **Supplementary powers.** In addition to the general and special powers conferred by [sections 1 through 17], each authority may exercise all powers incidental to the exercise of such general and special powers.

Section 9. **Granting of operation and use privileges.** (1) In connection with the operation of a port or transportation and storage facility

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owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the port or transportation and storage facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, services, or facilities at the port or transportation and storage facility; and

(c) making available services to be furnished by the authority or its agents at the port or transportation and storage facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority.

Section 10. **Port property — disposal.** Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by [section 16], an authority may sell, lease, or otherwise dispose of any port, transportation and storage facility, or other property or portion thereof or interest therein acquired pursuant to [sections 1 through 17]. Such disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing the disposition of other public property.

Section 11. **Municipal tax levy.** The port authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The levy made may not exceed the maximum levy permitted by 67-10-402 for port purposes or any lower limit that may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by a port authority in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of such taxes when and as paid to the port authority must be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in [sections 1 through 17]. Prior to the issuance of bonds under [sections 13 and 14], the port authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually as provided in this section until the bonds and interest thereon are fully paid.

Section 12. **County tax levy.** In counties supporting ports of port authorities, a levy authorized in 67-10-402 may be made for such purposes.

Section 13. **Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue bonds therefor, including refunding bonds, in such form and upon such terms as it determines, payable out of any revenues of the authority, including revenues derived from:

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(a) any port or transportation and storage facility;

(b) taxes levied pursuant to [section 11] or 67-10-402;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source are pledged exceeds the amount of such revenues to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding the limitation of 17-5-102. Except as otherwise provided in [sections 1 through 17], any bonds issued pursuant to [sections 1 through 17] by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of [sections 1 through 17] are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in [sections 1 through 17], prior to the payment of current costs of operation and maintenance of the facilities.

Section 14. **Method of funding deficiency.** (1) Subject to the conditions stated in this section, the governing body of any county or any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to [sections 1 through 17] by the local government or by an authority in which the local government is included, may by resolution covenant that if at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of such deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of such deficiency, and such taxes are not subject to

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any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to [sections 1 through 17], the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the local governments may determine.

(2) The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the local government at a special election called for that purpose by the governing body of the local government and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the local government has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such local government or authority may nevertheless issue bonds under [sections 1 through 17] payable solely from the sources referred to in [section 13(1)].

Section 15. **Debt service fund.** A port authority may create a debt service fund and accumulate therein a sum determined by the governing body, together with interest thereon, for the use, repairs, maintenance, and capital outlays of a port.

Section 16. **Federal and state money.** An authority may accept, receive, receipt for, and spend federal and state money and other public or private money made available by grant or loan to accomplish any of the purposes of [sections 1 through 17]. All federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

Section 17. **Tax exemption.** Any property in this state acquired by an authority for port purposes pursuant to the provisions of [sections 1 through 17], and any income derived by the authority from the ownership, operation, or control thereof, are exempt from taxation to the same extent as other property used for public purposes.

Section 18. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. (1) For the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, *and ports* under the provisions of this chapter *and as provided in [sections 1 through 17]*, the county commissioners or the city or town council may

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each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax on the dollar of taxable value of the property of said county, city, or town:

(a) not to exceed 2 mills for airports and landing fields; and

(b) not to exceed 2 mills for ports.

(2) In the event of a jointly established airport, landing field, *or port,* the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture must pay.

(3) No property within any political subdivision may be subject to a tax pursuant to this section at an annual rate in excess of 2 mills *for airports, landing fields, or ports* unless it is found that the levy is insufficient for the purposes enumerated. In such a case the commissioners and councils acting are authorized and empowered to contract an indebtedness on behalf of such county, city, or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors and a majority vote cast therefor, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport *or port,* if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from such investments must be credited to the operations and maintenance budget of the airport *or port* governing body. The above provisions, notwithstanding other budget control measures and due to the uniqueness of the subject matter, are declared necessary in the interests of the public health and safety."

Approved April 12, 1985.

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CHAPTER NO. 457

[SB 12]

AN ACT TO INCLUDE THE UNIVERSITY SYSTEM AND THE LEGISLATIVE AND JUDICIAL BRANCHES OF STATE GOVERNMENT IN BUDGET AMENDMENT PROCEDURES; AMENDING SECTION 17-7-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-404, MCA, is amended to read:

"17-7-404. Budget amendment procedures. (1) Upon receiving a proposed budget amendment, the approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the approving authority.

(5) Upon receipt of the legislative finance committee's written report, the approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his

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written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in this part confers any authority on the legislative finance committee to approve or deny budget amendments."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 12, 1985.

CHAPTER NO. 458

[SB 55]

AN ACT LIMITING THE TIME WITHIN WHICH AN ACTION MAY BE COMMENCED TO DETERMINE THE VALIDITY OF A ROYALTY INTEREST OF A COUNTY IN LAND ACQUIRED BY TAX DEED; AMENDING SECTIONS 15-17-312 AND 27-2-210, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** Nothing contained in [this act] shall change the nature of a royalty interest prior to actual production. The purpose of [this act] is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production.

Section 2. Section 15-17-312, MCA, is amended to read:

"15-17-312. Voided sale — refund to purchaser — limitation on action for royalty interest. (1) Where a sale of land for delinquent taxes thereon is declared void by judgment of court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the sale or by any assignee of the state, county, city, town, or district upon taking the assignment shall, with interest at the rate of 8% per annum from the date of such payment, be refunded to the purchaser or owner of such tax certificate upon the order of the chairman of the board of county commissioners of the county in which such land lies.

(2) The county shall then have a lien upon said property for the legal taxes on said property for the year in which it was sold, together with the penalty and interest; and so much of such money as has been paid to the state, city, town, or district by the treasurer of such county shall be charged to the state, city, town, or district by such treasurer and deducted from the

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next money due the state, city, town, or district, respectively, on account of taxes paid or collected. Purchasers of such certificate or owners thereof by assignment where sales have been made by cities or towns which by resolution or ordinance collect their own taxes instead of having the same collected by the county treasurer shall be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor, with proper charges and deductions against the respective funds of the said city or town, upon the next collection of taxes by said city or town.

(3) If such purchaser or owner of such certificate after such purchase or assignment from the state, county, city, town, or district has paid the taxes, penalty, and interest upon such piece or parcel of land, he or his assignee thereof shall have a lien upon such piece or parcel for the amount of taxes, penalty, and interest so paid, with interest as now provided by law to be collected upon delinquent taxes, which lien shall have the same priority as is now provided by law; and if he is in possession of such piece or parcel of land, he shall not be ejected therefrom until such amount and interest and penalty shall be paid.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, adverse possession, plus any applicable statute of limitations, shall apply in any suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210."

Section 3. Section 27-2-210, MCA, is amended to read:

"27-2-210. Actions arising from the seizure or sale of property for taxes. (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by any such officer in his official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property so seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making any such seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land."

Section 4. **Action to recover royalty interest in land sold for taxes.** An action against a county to recover a royalty interest in land

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acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

Section 5. **Applicability date.** This act applies to actions filed after September 30, 1985.

Approved April 12, 1985.

CHAPTER NO. 459

[SB 57]

AN ACT PROVIDING FOR THE ATTACHMENT OF A DONOR'S STATEMENT UNDER THE UNIFORM ANATOMICAL GIFT ACT TO THE BACK OF THE MOTOR VEHICLE OPERATOR'S OR CHAUFFEUR'S LICENSE; AMENDING SECTIONS 61-5-301 AND 72-17-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-17-204, MCA, is amended to read:

"72-17-204. Manner of executing gift — effectiveness. (1) A gift of all or part of the body under 72-17-201(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) *(a)* A gift of all or part of the body under 72-17-201(1) may also be made by document other than a will. The gift becomes effective upon the death of the donor.

(b) The document may be a card designed to be carried on the person *and* must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The document may be a statement attached to the reverse side of the person's Montana motor vehicle operator's or chauffeur's license. The statement must be signed by the owner of the operator's or chauffeur's license in the presence of two witnesses who must sign the statement in the presence of the donor.

(3) Any gift by a person designated in 72-17-201(2) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message."

Section 2. Section 61-5-301, MCA, is amended to read:

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"61-5-301. Indication on driver's license of intent to make anatomical gift. *(1)* The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 72-17-204 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application, printed information calling the applicant's attention to the provisions of this section, and each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(3) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-204, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(4) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Approved April 12, 1985.

CHAPTER NO. 460

[SB 88]

AN ACT REQUIRING A CITY UNDER CERTAIN CIRCUMSTANCES TO DISSOLVE ITS POLICE RETIREMENT FUND, TO PAY THE STATE'S PRIOR CONTRIBUTIONS TO THE GENERAL FUND, AND TO TRANSFER ANY MONEY REMAINING IN THE FUND TO THE CITY GENERAL FUND; AMENDING SECTION 19-10-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-10-202, MCA, is amended to read:

"19-10-202. Limit on use of fund. *(1) Except as provided in subsection (2), a* police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

(2) When a city or town no longer employs a police officer eligible to receive benefits paid from the city's police retirement fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor, for deposit in the general fund, an amount proportional to the prior contributions made by the state under 19-10-305, as determined by the

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state auditor. Any remaining money in the fund must be transferred to the city general fund to be used by the city for any authorized city purpose."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1985.

CHAPTER NO. 461

[SB 95]

AN ACT TO CONFORM TO FEDERAL LAW THE PROVISIONS OF THE UNEMPLOYMENT INSURANCE LAW RELATING TO THE SOURCE OF FUNDS FOR DEPARTMENT ADMINISTRATIVE EXPENSES; AMENDING SECTIONS 39-51-201 AND 39-51-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the four quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in

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which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter *but does not include assessments under 39-51-404(4).*

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant

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and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

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(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, *an assessment equal to* .1% of *all taxable wages provided for in 39-51-1108* and .05% of total wages paid by employers not covered by an experience rating *must be levied against and paid by all employers and* may be used by the department for

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administrative purposes. All such *assessments* must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any *assessments* deposited to the unemployment insurance administration account that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1985.

CHAPTER NO. 462

[SB 156]

AN ACT CHANGING THE DESIGNATION CRITERIA FOR COAL BOARD GRANTS AND LOANS; AMENDING SECTION 90-6-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall annually designate:

(a) each county, incorporated *city* and *town*, school *district*, and other governmental *unit* which *has* had or *expects* to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection *(4)*;

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of state lands for a project within the county that will establish a new coal mine to produce at least 1 million tons a year or that will increase the production of an existing mine by at least 1 million tons a year and for which the department of commerce determines that the new or expanded production authorized by the permit will commence within 3 years of the designation; or

(ii) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of natural resources and conservation for a steam-generating or other coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 3 years of the designation;

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(c) each local governmental unit located within 50 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i) or (1)(b)(ii); and

(d) each local governmental unit in which:

(i) a mine that has produced 1 million tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) The coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact and educational trust fund account established under this part, subject to the limitations imposed by 90-6-211, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education."

Approved April 12, 1985.

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CHAPTER NO. 463

[SB 234]

AN ACT TO DIRECT THE DEPARTMENT OF REVENUE TO USE CERTAIN SUBSTITUTES FOR MARKET VALUE WHEN APPRAISING AND ASSESSING PROPERTY FOR TAX PURPOSES; PROVIDING AN EXEMPTION FOR CERTAIN PROPERTIES; AMENDING SECTIONS 15-6-201 AND 15-8-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the appraisal and assessment of agricultural implements and machinery could be accomplished most efficiently and equitably by the use of the Official Guide, Tractor and Farm Equipment, published by the National Farm and Power Equipment Dealers Association, St. Louis, Missouri; and

WHEREAS, the most accurate reflection of market value of agricultural implements and machinery listed by the above official guide is that of loan value as compared to wholesale value in other national guides.

Be it enacted by the legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) *Except as provided in subsection (3), the* market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140, *except:*

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

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(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven is the percentage of market value established for each class of property in 15-6-134 through 15-6-141.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2), 15-6-132, and 15-6-133 for each class of property."

Section 2. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

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(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and l eld by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(n) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit; *and*

(o) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and is applicable to tax years beginning after December 31, 1985.

Approved April 12, 1985.

CHAPTER NO. 464

[SB 247]

AN ACT REQUIRING A PUBLIC EMPLOYER TO PICK UP A MEMBER'S CONTRIBUTIONS UNDER THE PUBLIC EMPLOYEES', TEACHERS', HIGHWAY PATROLMEN'S, SHERIFFS', STATE GAME WARDENS', AND MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEMS; REQUIRING THE EMPLOYER TO DEDUCT FROM THE MEMBER'S COMPENSATION AN AMOUNT EQUAL TO THE AMOUNT OF THE MEMBER'S CONTRIBUTIONS PICKED UP BY THE EMPLOYER; REQUIRING A MEMBER TO PAY STATE AND LOCAL TAXES ON A REFUND OF HIS CONTRIBUTIONS; AMENDING SECTIONS 15-30-111, 15-30-136, 19-3-105, 19-3-701, 19-4-101, 19-4-208, 19-4-602, 19-4-706, 19-4-707, 19-6-402, 19-6-705, 19-7-403, 19-7-705, 19-8-502, 19-8-805, 19-9-601, AND 19-9-1005, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

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(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid *under* the *municipal police officers'* retirement system *that are specified as exempt from taxation by 19-9-1005*;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

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(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation."

Section 2. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

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(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits received as federal employees' retirement not in excess of $3,600;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid *under* the *municipal* police officers' retirement system *that are specified as exempt from taxation by 19-9-1005*;

(o) all benefits not in excess of $360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

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(4) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8)."

Section 3. Section 19-3-105, MCA, is amended to read:

"19-3-105. Exemption from taxes and legal process. The right of a person to a retirement allowance or any other benefit under this chapter and the moneys in the fund created under this chapter *is* not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for a refund paid under 19-3-703 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-3-701; or

(3) assignable except as in this chapter specifically provided."

Section 4. Section 19-3-701, MCA, is amended to read:

"19-3-701. **Member's contribution to be deducted.** *(1)* The normal contribution of each member *is* 6% of his compensation. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as defined in 19-3-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

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Section 5. Section 19-4-208, MCA, is amended to read:

"19-4-208. Duties of employer. Each employer shall:

(1) *pick up* the contribution of each member employed by him at the rate prescribed by 19-4-602 and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 19-4-605, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board."

Section 6. Section 19-4-101, MCA, is amended to read:

"19-4-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602. If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately

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compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service with the employer from whom this type of compensation was received to determine a yearly amount. The member and the employer must pay the regular contribution on the termination pay; or

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement to a tax sheltered annuity or deferred compensation program and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the

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provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 7. Section 19-4-602, MCA, is amended to read:

"19-4-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions *for* the members to provide for their annuities shall be accumulated in individual accounts for each member. *The normal contribution of each member is 7.044% of his earned compensation.* Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) *(a)* Each employer, *pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under this section for service rendered after June 30, 1985.*

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member

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and must be included in the member's wages as defined in 19-1-102 and his earned compensation as used to define his average final compensation in 19-4-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the *normal* contributions and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(3) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund."

Section 8. Section 19-4-706, MCA, is amended to read:

"19-4-706. Exemption from taxation and legal process. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana *except for a refund paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;*

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided *in this chapter.*"

Section 9. Section 19-4-707, MCA, is amended to read:

"19-4-707. Increase in allowances of certain retirees. (1) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of $1 per month for each year of creditable service plus $2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of $2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

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(2) The funds to pay for the increases in retirement allowances prescribed in subsection (1) shall be provided as follows:

(a) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 19-4-602; and

(b) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 19-4-605(1)."

Section 10. Section 19-6-402, MCA, is amended to read:

"19-6-402. Member's contribution. *(1)* Every member shall be required to contribute into the account a sum equal to 6 ½% of his monthly salary, which sum shall be deposited to his credit in the account.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as used to define his final salary in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 11. Section 19-6-705, MCA, is amended to read:

"19-6-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these *is:*

(1) exempt from any state, *county,* or municipal tax *except for a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;*

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-6-706."

Section 12. Section 19-7-403, MCA, is amended to read:

"19-7-403. Members' contributions deducted. *(1)* Every member shall be required to contribute into the account 7% of his monthly salary, which shall be deposited to his credit in the account.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall

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pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his salary as used to define his final salary in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 13. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these *is:*

(1) exempt from any state, *county,* or municipal tax *except for a refund paid under 19-7-304(1) of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;*

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-7-706."

Section 14. Section 19-8-502, MCA, is amended to read:

"19-8-502. Member's contribution. *(1)* Every member is required to contribute into the account a sum equal to 7% of his monthly salary, which sum shall be deposited to his credit in the account.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as used to define his final salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to

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the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 15. Section 19-8-805, MCA, is amended to read:

"19-8-805. Exemption from taxes and legal process. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these *is:*

(1) exempt from any state, *county,* or municipal tax *except for a refund paid under 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;*

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-8-806."

Section 16. Section 19-9-601, MCA, is amended to read:

"19-9-601. Member contributions. *(1) The normal contribution* of each active member *is* 6% *of his monthly compensation* or, in the case of a member first employed by an employer as a police officer after June 30, 1979, 7 ½% of his monthly compensation, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his monthly compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 17. Section 19-9-1005, MCA, is amended to read:

"19-9-1005. Exemption from taxes. Any money *paid* in accordance with the provisions of this chapter is exempt from any state, *county,* or municipal tax *except a refund paid under 19-9-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-9-601."*

Section 18. **Extension of authority.** Any existing authority of the public employees' retirement board or the teachers' retirement board to

make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 19. **Nonseverability.** It is the intent of the legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 20. **Effective date.** This act is effective July 1, 1985.

Approved April 12, 1985.

CHAPTER NO. 465

[HB 184]

AN ACT TO ALLOW CASH PAYMENT FOR BINGO PRIZES; AMENDING SECTION 23-5-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-412, MCA, is amended to read:

"23-5-412. Bingo prizes. Bingo prizes *may be paid in either* tangible personal property *or* cash, *except that a prize must be paid in tangible personal property if the game is played on a player-operated electronic video game machine. A prize may* not exceed the value of $100 for each individual bingo award. The price for an individual bingo card *may* not exceed 50 cents. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award."

Approved April 12, 1985.

CHAPTER NO. 466

[SB 135]

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE BOARD OF EXAMINERS APPROVE CHANGE ORDERS CONCERNING THE CONSTRUCTION OF BUILDINGS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

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(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders *up to $5,000. Any other change order must be with the consent of the board of examiners. The board of examiners shall act within 14 working days after processing completion by the department.*

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

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CHAPTER NO. 467

[SB 136]

AN ACT TO REQUIRE APPROVAL OF THE BOARD OF EXAMINERS ONLY FOR THE AWARD OF PROTESTED CONSTRUCTION CONTRACTS OR CONSTRUCTION CONTRACTS NOT AWARDED TO THE LOW BIDDER; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"**18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount. *However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners.*

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the

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construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 468

[SB 229]

AN ACT TO ESTABLISH A RECIPROCAL PREFERENCE LAW FOR BIDDERS ON CONSTRUCTION PROJECTS; AMENDING SECTION 18-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products,

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materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 469

[SB 233]

AN ACT TO PROVIDE A 30-DAY LIFE INSURANCE SETTLEMENT PERIOD AFTER WHICH INTEREST ACCRUES UNTIL SETTLEMENT; AMENDING SECTIONS 33-20-114, 33-20-115, AND 33-20-1207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-114, MCA, is amended to read:

"33-20-114. Payment of claims — interest. *(1)* There shall be a provision, *which may be made by endorsement,* that when a claim *is made upon* the death of the insured, settlement shall be made upon receipt of proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant.

(2) There shall be a provision, which may be made by endorsement, that settlement be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement shall include interest from the 30th day until settlement. Interest shall be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer after October 1, 1985, regardless of whether those provisions are included in the policy."

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Section 2. Section 33-20-115, MCA, is amended to read:

"33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the personal representative of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy.

(5) The provisions of 33-20-114(2) shall be incorporated into an industrial life insurance policy and are applicable as set out in that subsection."

Section 3. Section 33-20-1207, MCA, is amended to read:

"33-20-1207. Payment of benefits. *(1)* The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(2) The provisions of 33-20-114(2) shall be incorporated into the group life insurance policy and are applicable as set out in that subsection."

Approved April 15, 1985.

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CHAPTER NO. 470

[SB 266]

AN ACT ALLOWING FOR THE ADJUSTMENT OF BOUNDARIES OF RURAL FIRE DISTRICTS AT THE HEARING ON THE PETITION TO CREATE SUCH A DISTRICT; REQUIRING SUCH ADJUSTMENTS TO BE MADE IN RESPONSE TO WRITTEN REQUESTS RECEIVED PRIOR TO OR ON THE DATE SET FOR THE HEARING; AMENDING SECTION 7-33-2103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2103, MCA, is amended to read:

"7-33-2103. Hearing on petition — decision. (1) The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient.

(2) The board may adjust the boundaries of the proposed district to reflect any freeholder's written requests for subtraction or annexation of parcels of the freeholder's land adjacent to the boundary line of the proposed district. Such written requests must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing."

Approved April 15, 1985.

CHAPTER NO. 471

[SB 281]

AN ACT LIMITING THE AMOUNT OF A PERMANENT TOTAL BENEFITS LUMP-SUM WORKERS' COMPENSATION PAYMENT BY DISCOUNTING IT BY 7 PERCENT, COMPOUNDED ANNUALLY; PROVIDING A METHOD FOR DETERMINING WHETHER A LUMP-SUM PAYMENT WILL BE GRANTED; AMENDING SECTIONS 39-71-741, 39-71-2109, AND 39-71-2207, MCA; AND PROVIDING AN APPLICABILITY DATE, RETROACTIVE EFFECT CLAUSE, AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments — division approval required. *(1)* The biweekly payments provided for

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in this chapter may be converted, in whole or in part, into a lump-sum payment. *Regardless of the date of the injury or of a prior lump-sum payment, a lump-sum conversion of permanent total biweekly payments awarded or paid after [the effective date of this act] must equal the estimated present value of the total unpaid permanent total biweekly payments, assuming interest at 7% per year, compounded annually, unless the conversion improves the financial condition of the worker or his beneficiary, as provided in subsection (2)(b). If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics.*

(2) The conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and *approval of the conversion rests* in the discretion of the division as to the amount of *the* lump-sum payment and the advisability of *the* conversion. *It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The approval or award of a lump-sum conversion by the division or the workers' compensation judge must be the exception, not the rule, and may be given only if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with the biweekly payments and his other available resources. The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion of permanent total biweekly payments will be approved or awarded:*

(a) The difference between the present discounted value of a lump sum and the future value of the biweekly payments cannot be the only grounds for approving or awarding a lump-sum conversion.

(b) A lump-sum conversion that improves the financial condition of the worker or his beneficiary over what would have been reasonably expected had the worker not been injured or died can be approved or awarded only if the lump-sum conversion is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period. The worker or his beneficiary must demonstrate the financial condition that would have been reasonably expected, taking into consideration his age, education, work experience, and probable job promotions and pay increases.

(c) If the existing delinquent or outstanding debts are used as grounds for a lump-sum conversion, the worker or his beneficiary must demonstrate through a debt management plan that a lump sum for that purpose is necessary to sustain himself financially.

(d) If a business venture is used as grounds for a lump-sum conversion, the worker or his beneficiary must demonstrate through a business plan that a lump sum for that purpose is necessary to sustain himself financially. The business plan must at least show the feasibility of the business, given the market conditions in the intended market area, and the cash that will be available to him on a biweekly basis after start-up costs and other

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business expenses are considered throughout the expected life of the venture.

(3) If the division finds that an application for lump-sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the division may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational, or other evaluative studies to determine whether a lump-sum conversion is in the best interest of the worker or his beneficiary.

(4) The division *has* full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.

(5) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination."

Section 2. Section 39-71-2109, MCA, is amended to read:

"39-71-2109. When employer may be relieved from liability. Any employer *bound by compensation plan No. 1* against whom liability may exist for compensation *for permanent benefits* under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists *for permanent total benefits*, assuming interest at 7% per annum, *compounded annually*, with the division; or

(2) *depositing with the division the sum of the unpaid permanent partial benefits for which such liability exists.*"

Section 3. Section 39-71-2207, MCA, is amended to read:

"39-71-2207. How insurer relieved from liability. Any *compensation plan No. 2* insurer against whom liability may exist for compensation *for permanent benefits* under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists *for permanent total benefits*, assuming interest at 7% per annum *compounded annually*, with the division; or

(2) *depositing with the division the sum of the unpaid permanent partial benefits for which such liability exists.*"

Section 4. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

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act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Applicability — retroactive effect.** This act applies retroactively, within the meaning of 1-2-109, to injuries incurred and lump sums awarded or paid prior to the effective date of this act if a lump sum is awarded or paid for the injury or the award or settlement is reopened and redetermined after the effective date of this act. The mere passage of this act is not grounds for reopening any case.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 472

[SB 300]

AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO CONDUCT AN AUDIT OF EACH STATE AGENCY EVERY 2 YEARS AND TO CONDUCT SPECIAL AUDITS WHEN DETERMINED NECESSARY; AMENDING SECTION 5-13-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-304, MCA, is amended to read:

"**5-13-304. Powers and duties.** The legislative auditor shall:

(1) *conduct a financial and compliance* audit of every state agency *every 2 years covering the 2-year period since the last audit, unless otherwise required by state law*;

(2) conduct a special audit whenever he determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state agency which was audited, each member of the committee, and the legislative council.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information in his possession relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official

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or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) report to the legislature during the first week of each regular session. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 473

[SB 301]

AN ACT REVISING PAYMENT DEADLINES AND RELATED ENFORCEMENT PROCEDURES FOR STATE LEASES; AMENDING SECTION 77-6-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-506, MCA, is amended to read:

"77-6-506. Date when rental due — cancellation for nonpayment. *(1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the* rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the *entire* lease is canceled.

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled.

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(3) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment is not received by the final deadline. The notice shall be sent to the lessee at the address given in the lease.

(4) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then open for lease to applicants."

Section 2. **Applicability.** This act applies to all leases of state agricultural lands in effect on the effective date of this act and to all future leases of state agricultural lands.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Extension of authority.** Any existing authority of the board of land commissioners or the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1985.

CHAPTER NO. 474

[SB 316]

AN ACT TO REVISE THE ANNEXATION PROVISIONS OF THE COMMUNITY COLLEGE LAWS TO PROVIDE FOR TRANSITION IN TRUSTEE REPRESENTATION AND FOR A MEANS OF DISANNEXATION; AMENDING SECTION 20-15-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-15-231, MCA, is amended to read:

"20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. Such election shall be held on the next general election day.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with

such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(4) The proposition on the ballot shall be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district."

Approved April 15, 1985.

CHAPTER NO. 475

[SB 329]

AN ACT CLARIFYING PROVISIONS RELATING TO FREEDOM OF CHOICE OF MEDICAL ASSISTANCE PROVIDED THROUGH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTION 53-6-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-104, MCA, is amended to read:

"53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor. *(1)* The department of social

and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) Nothing in this section may be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111, 53-6-113 through 53-6-115, and 53-6-141."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1985.

CHAPTER NO. 476

[SB 332]

AN ACT PROVIDING FOR CONFIDENTIALITY OF LIBRARY RECORDS; AMENDING SECTIONS 2-6-101 AND 2-6-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Library Records Confidentiality Act".

Section 2. **Definitions.** As used in [section 3], the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

Section 3. **Nondisclosure of library records.** (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

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(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

Section 4. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, *except as provided in [section 3].*

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 5. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except *as provided in [section 3] and* as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

Section 6. **Penalty.** Any person who violates [section 3] is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

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Section 7. **Codification instruction.** Sections 1 through 3 and 6 are intended to be codified as an integral part of Title 22, chapter 1, and the provisions of Title 22, chapter 1, apply to sections 1 through 3 and 6.

Approved April 15, 1985.

CHAPTER NO. 477

[SB 385]

AN ACT AUTHORIZING THE BOARD OF REGENTS TO LEASE LAND TO A PRIVATE NONPROFIT FOUNDATION FOR THE CONSTRUCTION OF A STADIUM AT THE UNIVERSITY OF MONTANA AND EXEMPTING THE CONSTRUCTION FROM CERTAIN LAWS GOVERNING PUBLIC CONSTRUCTION CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature consented to the Board of Regents' authorization to the University of Montana to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana through adoption by the 48th Legislature of Senate Joint Resolution No. 14; and

WHEREAS, private funding for the construction of the project is available through the University of Montana Foundation, a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the University of Montana; and

WHEREAS, some of the funding is available in the form of in-kind donations of goods and services; and

WHEREAS, the laws of the State of Montana governing public contracts for the construction of public facilities are not compatible with the provision of in-kind goods and services; and

WHEREAS, the best interests of the people of the State of Montana would be served by allowing the University of Montana Foundation to help in any way it can to provide an improved stadium at the University; and

WHEREAS, the Legislature wishes to facilitate the project while protecting vital state interests in life/safety and long-term maintenance responsibilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Lease of university of Montana property authorized.** The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the university of Montana for the purpose of renovation or construction by the foundation of a football stadium for the university of Montana. The terms of the lease must be advantageous to the state and must include a guarantee that no commitment of funds to any portion of the initial construction, other than as approved in Senate Joint Resolution No. 14 of the 48th Legislature, is expressed or implied.

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Section 2. **Construction on leased land.** The construction of stadium facilities on land leased under [section 1] is not subject to the requirements of Title 18, chapter 2, except that:

(a) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e);

(b) the provisions of Title 18, chapter 2, part 4, apply to all labor except donated labor; and

(c) such other provisions of law as may be required to protect the interests of the state of Montana.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 478

[SB 399]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-206, 30-10-209, AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

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(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

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(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any

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agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized *and supervised under the laws of any state*;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States

for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date

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of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. *The fee for this exemption must be as prescribed in 30-10-209(4).*

(13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(14) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

Section 3. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

(2) *(a)* any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; *or*

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)*(a)* with respect to a specific security. Upon the

entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer *made in this state* directed by the offeror to not more than 10 persons (other than those designated in subsection *(7)*) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets; or

(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

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(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. *Payment of the waiver fee shall be as prescribed in 30-10-209.* A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) When the registration requirements are complied with, the commissioner shall approve the registration.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer *who is not a member of NASD, inc.*, by

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filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

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(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-10-206, MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

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(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer."

Section 6. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed

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at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) *If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.*

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105*(15)*, the fee shall be established by the commissioner by rule. For a request for any other exemption *or an exception to the provisions of parts 1 through 3 of this chapter*, the fee shall be $50.

(5) For waiver of the residency requirement of 30-10-201(4), the fee shall be $50 for each original registration.

(6) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded."

Section 7. Section 30-10-305, MCA, is amended to read:

"**30-10-305. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after *the* hearing *on the allegations contained in the cease and desist order* is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary

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injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307."

Section 8. **Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 479

[SB 408]

AN ACT TO EXEMPT TRANSACTIONS BY CAPITAL COMPANIES FROM SALESMAN AND ISSUER REGISTRATION PROVISIONS OF THE SECURITIES ACT OF MONTANA; AMENDING SECTION 30-10-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

(2) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(a) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule;

(b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and

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any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(3) the commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(4) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(5) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(6) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(7) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(8) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) any transaction pursuant to an offer directed by the offeror to not more than 10 persons (other than those designated in subsection (8) of this section) in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended;

(10) any offer or sale of a preorganization certificate or subscription if:

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(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(12) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(13) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(14) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(15) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(16) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102*; or*

(17) any transaction pursuant to the Montana Capital Company Act, Title 90, chapter 8, provided that a Montana capital company must first file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

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CHAPTER NO. 480

[SB 440]

AN ACT TO ALLOW EMPLOYERS TO OPERATE AS SELF-INSURED UNDER THE WORKERS' COMPENSATION ACT BY FORMING GROUPS TO BE CERTIFIED AS SELF-INSURED; AMENDING SECTIONS 39-71-117, 39-71-2103, AND 39-71-2106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof*; and*

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the division by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter."

Section 2. Section 39-71-2103, MCA, is amended to read:

"39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. *(1)* If such employer making such election shall be found by the division to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the division shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the division to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by rules of the division."

Section 3. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) If the division finds that an employer *has lost his solvency or financial ability to pay* the

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compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission *or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1*, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security for *the* payment *of compensation*, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(2) The security must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(3) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof."

Section 4. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1985.

CHAPTER NO. 481

[SB 461]

AN ACT AUTHORIZING COUNTIES, CITIES, CONSOLIDATED CITIES AND COUNTIES, TOWNS, AND SCHOOL DISTRICTS TO ISSUE TAX AND REVENUE ANTICIPATION NOTES TO BE SOLD AT PAR OR DISCOUNT AT PUBLIC SALE OR AT PRIVATE SALE TO THE MONTANA ECONOMIC DEVELOPMENT BOARD UNDER THE PROVISIONS OF THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING THAT THE PURCHASE OF SUCH NOTES AND ISSUANCE OF NOTES BY THE BOARD FOR SUCH PURCHASE ARE EXEMPT FROM THE DOLLAR LIMITATIONS CONTAINED IN THE MUNICIPAL FINANCE CONSOLIDATION ACT; DELETING THE LOAN LIMITATION IN SECTION 17-5-1608(1), MCA; PROVIDING FOR THE RESPONSIBILITIES OF THE COUNTY TREASURERS IN THE ISSUANCE OF SUCH NOTES BY SCHOOL DISTRICTS; EXEMPTING THE TAX AND REVENUE ANTICIPATION NOTES FROM THE DEBT LIMITATIONS ON SUCH LOCAL GOVERNMENTS; AMENDING SECTIONS 17-5-1606, 17-5-1608, 17-5-1611, AND 20-9-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 8], unless the context clearly requires otherwise, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government, by whatever name designated.

(2) "Local government" means any city, town, county, consolidated city-county, or school district.

(3) "Ordinance" means an ordinance or resolution of the local government.

(4) "Short-term obligations" are tax anticipation notes or revenue anticipation notes that mature at a time not to exceed 13 months from the date issued.

Section 2. **Short-term obligations authorized.** A local government may issue and sell short-term obligations as provided in [sections 1 through 8] in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. The proceeds of the obligations may be expended solely for the purposes for which the taxes or revenues were appropriated and for costs and expenses incident to the issuance and sale thereof. Pending expenditure, the proceeds may be invested as provided by law. The principal and interest on short-term obligations must be repaid from the money derived from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose.

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Section 3. **Issuance and sale of short-term obligations — procedure.** (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in Title 17, chapter 5, part 11, terms, conditions, and the covenants of the obligations. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the Montana economic development board as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434(2).

Section 4. **Refunding and renewal of short-term obligations.** Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations. Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

Section 5. **Short-term obligations — security.** Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

Section 6. **Funds for payment of principal and interest.** For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements.

Section 7. **Local government debt limitations not to apply to short-term obligations.** The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with [sections 1 through 8].

Section 8. **Authority cumulative.** The authority granted by [sections 1 through 8] is in addition and supplemental to any other authority granted and does not limit any other authority previously granted to any local government.

Section 9. Section 17-5-1606, MCA, is amended to read:

"17-5-1606. Bonds, bond anticipation notes, and notes of the board. (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to local government units and its purchases of their bonds, *registered warrants, and*

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tax or revenue anticipation notes and *other* notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be an obligation of the board payable out of any revenues, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(5) The notes and bonds must be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates; be in denominations; be in a form, either coupon or registered; carry registration privileges; be executed in a manner; be payable in a medium of payment, at places inside or outside the state; and be subject to terms of redemption as provided in resolutions of the board. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board."

Section 10. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes *or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in [section 1]*) to exceed $25 million."

Section 11. Section 17-5-1611, MCA, is amended to read:

"17-5-1611. Additional powers of the board. In addition to all other powers conferred on the board by this part or any other law, the board has the power:

(1) to purchase or hold municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes at prices and in a manner the board considers advisable;

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(2) to sell municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes acquired or held by it at prices without relation to cost and in a manner the board considers advisable;

(3) to invest funds or money acquired by the board as provided in 17-5-1641;

(4) to prescribe the form of application or procedure required of a local government unit for a loan or purchase of its municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes; fix the terms and conditions of the loan or purchase; and enter into agreements with local government units with respect to loans or purchases;

(5) to render services to local government units in connection with public or private sales of their municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the local government units for such services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to a local government unit or a proposed purchase by the board of municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes of the local government unit, whether or not the loan is made or the municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to a local government unit or purchase of municipal bonds, bond anticipation notes, *registered warrants, tax or revenue anticipation notes,* or *other* notes of a local government unit, to consider:

(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to repay the loan, notes, or bonds;

(d) the priority of need for the particular public improvement or purpose to be financed; and

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(e) varying the terms and conditions of its loans or purchases as between various local government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay such compensation for their services as the board may determine;

(12) to procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part."

Section 12. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; and

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(g) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in [sections 1 through 8];

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district;

(11) give each month to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance; and

(12) remit promptly to the state treasurer receipts for the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners."

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Section 13. **Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 482

[HB 333]

AN ACT ALLOWING A JUSTICE OF THE PEACE TO DESIGNATE A QUALIFIED PERSON TO ACT IN HIS PLACE WHENEVER HE IS SICK, DISABLED, OR ABSENT; AMENDING SECTION 3-10-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-231, MCA, is amended to read:

"3-10-231. Circumstances in which an acting justice called in — by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside in his behalf.

(2) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in his place during a temporary absence when no other justice or city judge is available. The county commissioners shall administer the oath of office to each person on this list within the ensuing 30 days or as soon thereafter as possible.

(3) Whenever a justice is sick, disabled, or absent, *the justice may call in* another justice, if there is one readily available, or a city judge or *a person from the list provided for in subsection (2)* to hold court for the absent *judge* until his return. *If the justice is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).*

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the *justice of the peace may designate another person* in the same manner as if the justice were sick or absent.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at his request."

Approved April 15, 1985.

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CHAPTER NO. 483

[HB 340]

AN ACT TO GENERALLY REVISE THE LAW PERTAINING TO DISPOSITION OF PERSONAL PROPERTY ABANDONED BY A TENANT AFTER TERMINATION; AMENDING SECTION 70-24-430, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-430, MCA, is amended to read:

"70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, *and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.*

(2) The landlord shall *inventory and* store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. *The landlord may charge a reasonable storage charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage.* The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(5) If the tenant, upon receipt of the notice provided in subsection *(3)*, responds in writing to the landlord on or before the day specified in the

notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage. *Reasonable storage costs are allowed a landlord who stores the property himself, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.*

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(7) A public or private sale authorized by this section shall be conducted under the provisions of 30-9-504(3) *or the sheriff's sale provisions of Title 25, chapter 13, part 7.*

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale *and any delinquent rent or damages owing on the premises* and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes."

Approved April 15, 1985.

CHAPTER NO. 484

[SB 126]

AN ACT TO AUTHORIZE GENERAL TRANSFERS OF APPROPRIATIONS WITHIN COUNTY BUDGETS FOR CERTAIN EXPENDITURE CLASSES; AMENDING SECTION 7-6-2325, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2325, MCA, is amended to read:

"7-6-2325. Transfer of appropriations within and among expenditure classes. Upon a resolution adopted by the board of county commissioners at a regular or special meeting and entered upon its minutes, transfers or revisions *in the general budget system* within *the classifications set forth in 7-6-2314(1)(a) through (1)(c)* may be made, provided that no salary shall be increased above the amount appropriated therefor."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 15, 1985.

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CHAPTER NO. 485

[SB 160]

AN ACT TO ALLOW TRANSFER OR REVISION OF APPROPRIATIONS WITHIN OR AMONG MUNICIPAL BUDGETS FOR CERTAIN BUDGET CLASSES; AMENDING SECTION 7-6-4236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4236, MCA, is amended to read:

"7-6-4236. Transfer of appropriations within and among expenditure classes. Upon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within *or among* the general class *or classes* of salaries and wages, maintenance and support, *and capital outlay* may be made, provided that no salary shall be increased above the amount appropriated therefor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 486

[SB 167]

AN ACT TO CLARIFY THAT SCHOOL DISTRICTS CAN CHARGE FEES FOR COURSES OR ACTIVITIES NOT REASONABLY RELATED TO A RECOGNIZED ACADEMIC GOAL OF THE DISTRICT; AMENDING SECTION 20-9-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-214, MCA, is amended to read:

"20-9-214. Fees. *(1)* The trustees of any district may*:*

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used*; and*

(b) charge pupils a reasonable fee for any course or activity not reasonably related to a recognized academic and educational goal of the district or any course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1) shall be deposited in a nonbudgeted fund as provided in 20-9-210."

Approved April 15, 1985.

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CHAPTER NO. 487

[SB 255]

AN ACT TO PROVIDE FOR THE USE OF MUZZLELOADERS IN SHOTGUN-ONLY HUNTING AREAS; AMENDING SECTION 87-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. *In areas where deer hunting is open to the use of shotguns only, the commission may authorize the use of muzzleloaders (rifled or smoothbore).* It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when written complaint of such damage has been filed with the commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and

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game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks or the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 488

[SB 265]

AN ACT GENERALLY REVISING THE LAW REGARDING LEASING OF STATE-OWNED CITY AND TOWN LOTS AND LAND VALUABLE FOR COMMERCIAL DEVELOPMENT; ELIMINATING THE REQUIREMENT THAT STATE LEASES OF LAND ARE SUBJECT TO SALE; CLARIFYING THAT COMMERCIAL PROPERTY MAY BE LEASED FOR THE SAME PERIOD AS CITY AND TOWN LOTS; EXTENDING THE MAXIMUM LEASE PERIOD FROM 25 TO 40 YEARS; AMENDING SECTIONS 77-1-204, 77-6-102, 77-6-109, 77-6-205, AND 77-6-503, MCA; AND REPEALING SECTION 77-6-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203(1). The lease period for such leases, except for power and school site leases, may not be for longer than *40* years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease,

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or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 2. Section 77-6-102, MCA, is amended to read:

"77-6-102. Surface leases authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town *lots,* city lots, *and lands valuable for commercial development* open to leasing upon proper application."

Section 3. Section 77-6-109, MCA, is amended to read:

"77-6-109. Duration of lease. No lease to agricultural or grazing lands may be for a period other than 5 or 10 years. Leases for city *lots,* town lots, *and lands valuable for commercial development* may not exceed *40* years."

Section 4. Section 77-6-205, MCA, is amended to read:

"77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, *or land valuable for commercial development* who has paid all rentals due from him to the state is entitled to have his lease renewed for a period *not to exceed the maximum lease period provided in 77-6-109* at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land."

Section 5. Section 77-6-503, MCA, is amended to read:

"77-6-503. Leases of city lots, town lots, and commercial property. As to town *lots,* city lots, *and land valuable for commercial development* owned by the state, the fair rental value thereof shall be determined

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from time to time by the department with the approval of the board and a record made thereof, and such town or city property *or land valuable for commercial development* may be leased at its current appraised rental value for terms not to exceed *40* years."

Section 6. **Repealer.** Section 77-6-106, MCA, is repealed.

Section 7. **Extension of authority.** Any existing authority of the board of land commissioners or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1985.

CHAPTER NO. 489

[SB 380]

AN ACT PROVIDING FOR THE SALE OF DEEDS FOR SQUARE INCHES OF LAND IN MONTANA TO RAISE REVENUE FOR MONTANA STATEHOOD CENTENNIAL ACTIVITIES; PROVIDING FOR THE DESIGNATION OF STATE LAND OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND ACCEPTANCE OF DONATIONS OF LAND FROM PRIVATE DONORS; PROVIDING FOR THE MONTANA STATEHOOD CENTENNIAL OFFICE TO ADMINISTER THE SALE OF DEEDS; PROVIDING FOR THE TITLE RECEIVED BY DEED HOLDERS AND RESERVATION OF VALUABLE INTERESTS IN THE STATE; PROVIDING FOR THE ADMINISTRATION OF THE ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of this act is to allow the state to acquire, through designation or donation, land for the purpose of selling symbolic deeds, in increments of 1 square inch, to raise funds for statehood centennial activities.

Section 2. **Definitions.** Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Office" means the Montana statehood centennial office as provided for in [section 3, House Bill No. 873].

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Centennial acre" means one or more separate parcels of land of about 1 acre located in Montana that are acquired by donation from a private source or designated land owned by the state. If there is more than one centennial acre, each separate parcel is to be designated by the office as a particular centennial acre, such as "the agricultural centennial acre" or "the mountain centennial acre".

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Section 3. **Source of land and sale of deeds — centennial fundraising.** (1) (a) The department may designate 1 or more acres of land to which it has title as a centennial acre.

(b) The department may accept the donation of title to 1 or more acres of land, for the benefit of statehood centennial fundraising, from a private donor. The department shall work with each donor to select a representative parcel of Montana land. A donation must include title to all mineral, oil and gas, or water rights attached to the land. A donation of the acre is exempt from the requirements of Title 76, chapters 3 and 4.

(2) As provided in [section 1], the state of Montana, through the office, may sell deeds to the centennial acre in portions of 1 square inch per sale.

Section 4. **Title to centennial acre.** (1) Title to the centennial acre remains with the state.

(2) The holder of a deed sold through the provisions of [this act] is entitled to "general enjoyment of the riches of the treasure state" in return for purchase of the deed, which indicates an "investment in the last of what is best" in America. Such a deed for 1 square inch of land does not confer title to the land described in the deed.

(3) The centennial acre must be managed by the department. Until June 30, 1991, such management must be in consultation with the office. The department may adopt such regulations for the use of the land as it considers necessary for the protection of the land, public use of the land, and enjoyment by the deed holders. Such regulations may include the right to restrict access to the land if such access hinders or infringes on the department's management.

(4) Any mineral, oil and gas, or other valuable interest, and all income, fees, or royalty proceeds of the land remain the property of the state of Montana. Such income, if any, must be deposited to the account of the Montana statehood centennial office as set forth in [section 7, House Bill No. 873] and after the termination of the office, it must be deposited to the account of the public school fund as provided for in 20-9-601.

(5) No dwellings, structures, or any physical thing may be erected on the land by any deed holder except in conformance with general regulations adopted by the department.

(6) The regulations adopted under this section must be posted at the centennial acre and are not subject to the provisions of Title 2, chapter 4.

Section 5. **Administration of sale.** (1) The office shall administer the sale of deeds for the square inches of land as authorized by [this act].

(2) The office shall prepare an individual deed for each square inch of the land. After certification by the office, such deeds are conclusive evidence that the holder of the deed purchased the deed to 1 square inch of the centennial acre. No record of subsequent transfer of a deed is required to be kept by the office, the department of fish, wildlife, and parks, or the county clerk and recorder.

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(3) (a) The price of a deed is $10, to be deposited to the account of the Montana statehood centennial office as provided in [section 7, House Bill No. 873].

(b) The cost of administering the sale of deeds under [this act] must be borne by the office. The costs of administering the program may be derived from the proceeds of the sales and from any other source except state general fund money.

(c) Proceeds exceeding the costs of administering the program shall first supplant general funds appropriated in [section 7, House Bill No. 873] and thereafter constitute funds for centennial activities as provided in [House Bill No. 873].

(4) If, on December 30, 1990, the office believes that there are sufficient unexpended funds derived from the operation of [this act], the office shall prepare a bill for the 1991 session of the legislature suggesting the establishment of a continuing fund for the further advancement of Montana's goals.

Section 6. **Contents of deeds.** In addition to any other matter printed on the deeds of square inches of land, they shall have printed on them the following: "Title to the land described in this deed is subject to the provisions of [insert citation of this act]. Such title is limited by the right of the state of Montana to manage the land for the benefit of the general public and the deed holders' enjoyment of the land. Ownership as evidenced by this deed does not entitle the holder to any right of use of the land different than that of the general public, nor does it obligate the holder to pay property taxes, assessments, or any other fees or levies commonly incident to title."

Section 7. **Exclusion of laws relating to land and land transfers.** (1) [This act] provides the sole method of selling deeds to square inches of land owned by the state for the funding of Montana's statehood centennial. The sale of deeds to square inches of the centennial acre are not subject to Title 76, chapters 3 and 4, but if the department constructs sanitary facilities on the site, it must comply with the requirements of Title 76, chapter 4. No other provision of law relating to recordation or filing of land transfers, surveying, subdividing land, zoning, or planning restrictions or master plans applies to the sale or ownership of deeds under [this act].

(2) The deed holders of square inches of land under [this act] do not hold title to the centennial acre or any part thereof for any purpose under the laws of the state of Montana. Such deed holders are not subject to taxes, fees, or assessments on their ownership interest and are not to be considered owners for the purposes of notification for the administration of units of local government or certain districts, including school districts.

(3) The state of Montana holds title to the land in trust for the public, and as such the land is to be considered as a parcel of state-owned land in all things necessary for the administration of units of local government and all districts, including school districts, in which it may be located.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

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CHAPTER NO. 490

[SB 415]

AN ACT PROVIDING AN OPTION FOR LOCAL DEPARTMENTS OR BOARDS OF HEALTH TO REVIEW CERTAIN SUBDIVISIONS; PROVIDING ADDITIONAL ADMINISTRATIVE AND JUDICIAL REMEDIES; AMENDING SECTIONS 76-4-102, 76-4-104 THROUGH 76-4-109, 76-4-121 THROUGH 76-4-127, AND 76-4-130, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(4) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(5) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(6) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(7) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(8) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(9) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(10) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be

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sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes."

Section 2. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the *reviewing authority* of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

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(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement."

Section 3. Section 76-4-105, MCA, is amended to read:

"**76-4-105. Lot fees.** (1) The department shall adopt reasonable rules setting forth fees, not to exceed $48 per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state special revenue fund provided for in 17-2-102 *or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction.* The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees *according to the fee schedule adopted under this section.*

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(3) When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 4. Section 76-4-106, MCA, is amended to read:

"76-4-106. Cooperation with other governmental agencies. (1) The *reviewing authority* may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and *municipal* officers and employees, including local health officers and sanitarians, shall cooperate with the *reviewing authority* in furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review."

Section 5. Section 76-4-107, MCA, is amended to read:

"76-4-107. Authority to inspect and monitor. In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the *reviewing authority* whenever *any* water supply or sewage disposal system is proposed or has been constructed may:

(1) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the *reviewing authority*, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(2) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality."

Section 6. Section 76-4-108, MCA, is amended to read:

"76-4-108. Enforcement. (1) *If the reviewing authority has reason to believe that a violation of this part or a rule made under it has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within*

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which the action is to be taken. For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may, no later than 30 days after service of a notice under this section, request a hearing before the reviewing authority or the board. If a request is filed, a hearing shall be held within a reasonable time.

(2) In addition to or instead of issuing an order, the *reviewing authority* may initiate appropriate action *to compel compliance with* this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority shall accept legal responsibility for its actions under this part."

Section 7. Section 76-4-109, MCA, is amended to read:

"76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) *or (2) do* not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies."

Section 8. Section 76-4-121, MCA, is amended to read:

"76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the *reviewing authority* has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision."

Section 9. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

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(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the *reviewing authority*, and the *reviewing authority* has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever *reviewing authority* approval is necessary; or

(b) whenever *reviewing authority* approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 10. Section 76-4-123, MCA, is amended to read:

"76-4-123. Review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the *reviewing authority* has indicated that the subdivision is subject to no sanitary restriction."

Section 11. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, *reviewing authority* approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain *reviewing authority* approval as provided in 76-4-122(2)(a)."

Section 12. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of development plans — land divisions excluded from review. (1) *Plans* and specifications of *a* subdivision as defined in this part shall be submitted to the *reviewing authority*, and the *reviewing authority* shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the *reviewing authority* shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the *reviewing authority* a preliminary plan of the proposed development,

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whatever information the developer feels necessary for its subsequent review, and information required by the *reviewing authority.*

(b) The *reviewing authority* must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review according to the provisions of this part, except that the following divisions, *unless such exclusions are used to evade the provisions of this part,* are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel *and that the division does not fall within a previously platted or approved subdivision*; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule."

Section 13. Section 76-4-126, MCA, is amended to read:

"76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board *or the reviewing authority.* Such hearings will be held pursuant to the Montana Administrative Procedure Act."

Section 14. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, send notice of certification to the *reviewing authority* that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan if one has not yet been submitted to the *reviewing authority*;

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(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued."

Section 15. Section 76-4-130, MCA, is amended to read:

"76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the *reviewing authority* until the *reviewing authority* has approved the deviation."

Section 16. **Revocation of certificate of approval.** If a violation of this part is found to exist, a reviewing authority may revoke a certificate of approval and reimpose sanitary restrictions on a subdivision, following a hearing before the reviewing authority under 76-4-108.

Section 17. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 18. **Codification instruction.** Section 16 is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to section 16.

Section 19. **Coordination instruction.** If House Bill No. 633, including the section of that bill that appropriates money to the department for subdivision review in fiscal years 1986 and 1987, is not passed and approved, section 3, subsection (3) of this act is amended to provide a fee of $10 per reviewed lot.

Section 20. **Effective date.** This act is effective July 1, 1985.

Approved April 15, 1985.

CHAPTER NO. 491

[SB 423]

AN ACT REQUIRING FINANCIAL INSTITUTIONS TO DISCLOSE TO DEPOSITORS THE TIME PERIODS IN WHICH FUNDS WILL BE AVAILABLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Financial institution's responsibility to provide notice when funds become available for withdrawal.** (1) A depository bank shall provide clear and conspicuous written notice of the time periods and exceptions to the periods, concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the financial institution after which an item is treated as being received at the opening of the next business day.

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(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account;

(b) mailed to each of the financial institution's present customers on or before December 31, 1985; and

(c) posted in a conspicuous manner at each financial institution, automatic teller machine location, or other device that accepts deposits.

(3) A deposit slip or envelope, or any other printed form furnished by the depository financial institution used in connection with deposits, must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information."

Approved April 15, 1985.

CHAPTER NO. 492

[SB 433]

AN ACT LIMITING THE LIABILITY OF MEDICAL EXAMINERS AND PHYSICIANS WHO PERFORM AUTOPSIES AT THE REQUEST OF A FEDERAL AGENT INVESTIGATING A DEATH WITHIN A FEDERAL JURISDICTION; AMENDING SECTIONS 44-3-401 AND 46-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-3-401, MCA, is amended to read:

"**44-3-401. Exemption from liability for autopsy.** No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter *or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.*"

Section 2. Section 46-4-104, MCA, is amended to read:

"**46-4-104. Liability of a mortuary or physician.** No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter *or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.*"

Approved April 15, 1985.

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CHAPTER NO. 493

[HB 298]

AN ACT PERMITTING A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM WHO IS RECEIVING AN OPTIONAL RETIREMENT ALLOWANCE TO DESIGNATE A DIFFERENT BENEFICIARY, SELECT A DIFFERENT OPTION, OR CONVERT HIS OPTIONAL RETIREMENT ALLOWANCE TO A REGULAR RETIREMENT OR DISABILITY ALLOWANCE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-4-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-702, MCA, is amended to read:

"19-4-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in part 8 of this chapter and 19-4-902. If a beneficiary dies within 30 days after retirement, his election to receive an optional allowance is void and his death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of his retirement and provides an allowance payable to him throughout his lifetime and, upon his death, an allowance payable to the person that he nominated by written designation, duly acknowledged and filed with the retirement board at the time of his retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout his lifetime and, upon his death, continue throughout the lifetime of his designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout his lifetime, and upon his death, one-half of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout his lifetime, and upon his death, two-thirds of the optional allowance will be continued throughout the lifetime of his designated beneficiary.

(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor.

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(f) Option F—some other benefit will be paid either to the member or his surviving designated beneficiary in accordance with provisions approved by the retirement board.

(3) (a) Upon written request to the retirement board, a retired member who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert his optional retirement allowance to a regular retirement or disability allowance if:

(i) the original beneficiary has died; or

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change."

Section 2. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1985.

CHAPTER NO. 494

[HB 331]

AN ACT AUTHORIZING THE ISSUANCE OF SPECIAL LICENSE PLATES TO MEMBERS OF THE RESERVE ARMED FORCES OF THE UNITED STATES OF AMERICA; AMENDING SECTION 61-3-446, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **License plates for reservists.** (1) In lieu of the regular license plates prescribed by law, there may be issued to each member of the reserve armed forces of the United States of America who is a motor vehicle owner and a resident of this state license plates, to be numbered in sets of two with a different number following appropriate letters and symbol as follows: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). Plates must be furnished by the division of motor vehicles to the county treasurer, who shall issue them to the members of the armed forces reserves. The commanding officer of each armed forces reserve unit shall issue to each eligible member of such reserve unit a certificate authorizing the county treasurer to issue one set of such plates, which the county treasurer shall issue upon presentation of the certificate by the eligible member. The member shall surrender the plates upon becoming ineligible to use them, and the commanding officer shall notify the county treasurer of cancellation of the ineligible person's certificate. Plates so issued must be placed or mounted on a vehicle owned by such member and must be removed upon sale or other disposition of the vehicle.

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(2) Each member of the reserve armed forces of the United States who receives special license plates under subsection (1) is liable for payment of all taxes and fees required under parts 3 and 5 of this chapter.

Section 2. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-443, 61-3-444, 61-3-445, *or [section 1]* disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, apply to section 1.

Section 4. **Effective date.** This act is effective January 1, 1986.

Approved April 15, 1985.

CHAPTER NO. 495

[HB 710]

AN ACT ALLOWING AN IDENTIFICATION CARD TO BE ISSUED TO A PERSON WHOSE DRIVER'S LICENSE IS SUSPENDED; AMENDING SECTION 61-12-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-501, MCA, is amended to read:

"61-12-501. Authority of division of motor vehicles to issue identification cards. The division is hereby authorized to issue identification cards to any person:

(1) who is not the holder of a valid driver's license; *or*

(2) whose driver's license is suspended."

Section 2. **Extension of authority.** Any existing authority of the department of justice, division of motor vehicles, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1985.

CHAPTER NO. 496

[SB 152]

AN ACT TO PROVIDE A PRESUMPTION IN FAVOR OF JOINT CUSTODY IF IN A CHILD'S BEST INTERESTS; PROVIDING STANDARDS FOR ESTABLISHING RESIDENCY; AMENDING SECTION 40-4-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-224, MCA, is amended to read:

"40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for

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joint custody, the court shall *presume* joint custody is in the best interests of a minor child *unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests of the minor child.* If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. *Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests of a child, nor is a finding that the parents are hostile to each other.*

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the *physical custody and* residency of the child shall be *allotted between* the parents in such a way as to assure the child frequent and continuing contact with both parents. *The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best interests of the child as the primary consideration.*

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody."

Approved April 16, 1985.

CHAPTER NO. 497

[SB 258]

AN ACT REVISING THE LAW RELATING TO COMPENSATION PAYABLE FOR SURFACE DAMAGE BY OIL AND GAS DEVELOPMENT; PROVIDING DOUBLE DAMAGES FOR FAILURE TO MAKE STIPULATED DAMAGE PAYMENTS; REQUIRING AN OIL AND GAS DEVELOPER OR OPERATOR TO NOTIFY THE SURFACE OWNER OF HIS SPECIFIC INTENTIONS BEFORE COMMENCING DRILLING OPERATIONS; AMENDING SECTIONS 82-10-503, 82-10-504, AND 82-11-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-10-503, MCA, is amended to read:

"82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder

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at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. *The notice shall be given no more than 90 days and no fewer than 10 days before commencement of any activity on the land surface.*"

Section 2. Section 82-10-504, MCA, is amended to read:

"**82-10-504. Surface damage and disruption payments.** (1) The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations.

(2) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall be given to the period of time during which the loss occurs.

(3) The surface owner may elect to *receive* annual *damage payments* over a period of time, except that the surface owner shall be compensated by a single sum payment for harm caused by exploration only.

(4) The payments contemplated by this section may only cover land directly affected by drilling operations and production. Payments under this section are intended to compensate the surface owner for damage and disruption; no person may reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate."

Section 3. **Penalty — double damages.** An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

Section 4. Section 82-11-122, MCA, is amended to read:

"**82-11-122. Notice of intention to drill or conduct seismic operations — notice to surface owner.** It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. *After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations.* It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103."

Section 5. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to section 3.

Section 6. **Extension of authority.** Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 16, 1985.

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CHAPTER NO. 498

[SB 273]

AN ACT ESTABLISHING CONTRACT REQUIREMENTS FOR THE CONSTRUCTION, REPAIR, ALTERATION, IMPROVEMENT, MAINTENANCE, REHABILITATION, OR RECONSTRUCTION OF A STATE WATER PROJECT; AMENDING SECTION 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Contract requirements.** (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department must solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are less than $25,000; or

(d) an exigency exists.

(4) The provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded under this section. The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are less than $25,000.

Section 2. Section 18-2-201, MCA, is amended to read:

"**18-2-201. Bonding requirements.** (1) *Except as otherwise provided in [section 1], whenever* any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall

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contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with two or more sureties acceptable to the governmental body letting the contract, or with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

(a) faithfully perform all of the provisions of such contract;

(b) pay all laborers, mechanics, subcontractors, and materialmen; and

(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana."

Section 3. **Extension of authority.** Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to section 1.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 16, 1985.

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CHAPTER NO. 499

[SB 326]

AN ACT PROVIDING THAT GROUND WATER MAY BE APPROPRIATED ONLY BY A PERSON WHO IS OR HAS THE CONSENT OF THE EXCLUSIVE OWNER OF THE GROUND WATER DEVELOPMENT WORKS; AMENDING SECTION 85-2-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) *Groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights.* Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required;

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however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Approved April 16, 1985.

CHAPTER NO. 500

[SB 354]

AN ACT TO CLARIFY THAT THE CONVEYANCE OF ONE OR MORE PARTS OF A BUILDING IS NOT A SUBDIVISION; AMENDING SECTION 76-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-204, MCA, is amended to read:

"76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, *whether existing or proposed,* is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 16, 1985.

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CHAPTER NO. 501

[SB 369]

AN ACT TO PROVIDE FOR THE SAFETY OF DAMS AND RESERVOIRS; AMENDING SECTIONS 85-15-101, 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTION 85-15-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This chapter may be cited as the "Montana Dam Safety Act".

Section 2. **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water with an impounding capacity of 50 acre-feet or greater.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means any threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means any change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means any dam or reservoir the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy

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of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or any other entity or any authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of any dam or reservoir.

(14) "Reservoir" means any valley, basin, coulee, ravine, or other land area that contains 50 acre-feet or more of impounded water.

Section 3. Section 85-15-101, MCA, is amended to read:

"85-15-101. Dams and reservoirs — how constructed. No person *may* fill or procure to be filled with water any *dam or* reservoir *that* is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein."

Section 4. Section 85-15-102, MCA, is amended to read:

"85-15-102. Construction in a secure manner. *No* person may construct or cause to be constructed a dam or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner."

Section 5. Section 85-15-104, MCA, is amended to read:

"85-15-104. Exemptions. *The provisions of 85-15-103 and [sections 1, 2, and 6 through 20] do not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit.* The provisions of *[sections 6 through 20] do* not apply to *federal* dams and reservoirs, *or to dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission. In addition, the provisions of [sections 6 through 20] do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.*"

Section 6. **High-hazard dam — determination — plans.** Any person proposing to construct any dam or reservoir shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include the information required by the department. The department shall make the determination required by this section within 60 calendar days after a complete application is received by the department.

Section 7. **Preparation and approval of plans.** (1) A person may not begin construction of a high-hazard dam as determined under [section 6] without first obtaining a construction permit from the department.

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(2) An application for a construction permit must be submitted to the department and must contain:

(a) plans and specifications for the proposed construction, prepared by or under the direction of an engineer experienced in dam design and construction; and

(b) other data and information required by the department.

(3) Within 60 calendar days after receipt of the application and any additional information requested by the department, the department shall: .

(a) issue a construction permit or deny the application, as filed; or

(b) issue a construction permit upon terms, conditions, or modifications the department considers appropriate.

Section 8. **Inspection and reports during construction.** (1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

(2) Inspections during construction must be performed at intervals necessary to ensure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections.

(3) The department shall set procedures and requirements for reporting information obtained from, during, or as the result of an inspection. The engineer in charge shall certify all reports to the department.

(4) The department may also inspect the dam during construction to ensure conformity with the construction permit.

(5) If the department finds that construction of the high-hazard dam does not conform with the construction permit, it may order that construction be stopped until changes are made in conformity with the permit.

Section 9. **Operating permit.** (1) An operation plan must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the dam and appurtenant works; and

(c) emergency procedures and warning plans.

(2) When construction is complete and if the dam or reservoir conforms to the construction permit and when an operation plan has been approved, the department shall issue a permit to operate the high-hazard dam or reservoir, containing such conditions on the safe operation of the dam as it considers necessary.

Section 10. **Periodic inspections.** (1) Any high-hazard dam, whether or not previously permitted by the department, must be inspected as often as considered necessary by the department, but at least once every 5 years, in order to ensure the continued safe operation of the dam.

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(2) Periodic inspections required by this section must be performed by a qualified engineer, who shall make a report of the inspection to the department. If the department finds that the dam conforms to current safety standards, it shall issue or reissue, as the case may be, a permit to continue operation of the dam, containing such conditions on the safe operation of the dam as it considers necessary.

(3) The owner is responsible for inspections required under this section.

Section 11. **Requested inspections — costs — limitations against unsafe structures.** (1) At its discretion or upon receipt of an affidavit complaining that the person or property of the complainant is endangered by the construction, maintenance, or operation of any dam or reservoir, the department may order an inspection of the dam or reservoir unless the data, records, and inspection reports on file are adequate to determine that the complaint is not meritorious.

(2) If the complainant continues to request an inspection even though the department has determined under subsection (1) that the complaint is not meritorious, the department may make the inspection upon requiring the complainant to deposit with the department money sufficient to cover the costs of the inspection.

(3) If the dam or reservoir is found to be defective, the department may require the person who owns the dam or reservoir to pay all or part of the expenses of inspection. If the department requires such payment, it shall present a bill of costs to the owner. The costs shall constitute a lien upon the dam, reservoir, and other property of the owner and may be collected by appropriate action in a court of competent jurisdiction.

(4) If the dam or reservoir is not found to be defective after an inspection made under subsection (2), any money deposited by the complainant therefor must be paid to the general fund.

(5) If the inspection discloses defects in the dam or reservoir that, in the judgment of the department, constitute an immediate hazard to life or property, the department may order:

(a) the draining of the dam or reservoir;

(b) the limitation or cessation of use of the dam or reservoir or any defective appurtenant works; or

(c) any other steps to eliminate the hazard until the dam, reservoir, or appurtenant works have been made safe and approved by the department.

Section 12. **Emergency repairs or breaching.** (1) In case of an emergency, the department may take any action necessary to safeguard life and property. This action must be commenced immediately by the owner, or by the department at the owner's expense if the owner fails to act. The department must be notified immediately of any proposed emergency repairs or breaching to be instituted by the owner.

(2) All costs incurred by the department during an emergency must be paid by the owner on receipt of a bill of costs from the department. The costs are a lien upon the dam, reservoir, and other property of the owner

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and may be collected by appropriate action in a court of competent jurisdiction.

Section 13. **Municipality or county prohibited from regulation.** No municipality or county may regulate, supervise, or provide for the regulation or supervision of any dam or reservoir in this state or the construction, maintenance, or operation thereof or limit the size of any dam or reservoir or the amount of water that may be stored therein. This chapter does not prevent a municipality or county from adopting ordinances or regulations regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that:

(1) are not within the state's jurisdiction; or

(2) are not subject to regulation by another public agency or body.

Section 14. **Liability of owners for damage.** (1) Except as provided in subsection (2), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter is not, in the absence of negligence, liable for damages resulting from flows of water from the dam or reservoir which are of sufficient magnitude to exceed the limits of the 100-year floodplain as defined in 76-5-103. In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter may, without incurring liability, allow passage through the reservoir of inflows without diminution.

Section 15. **Permit cancellation.** Failure to comply with the provisions of [section 6, 7, 8, 9, or 11] subjects the permit to cancellation at any time during the progress of construction or the operation of the dam. The department is authorized to cancel any permit if the provisions of [section 6, 7, 8, 9, or 11] have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department.

Section 16. **Penalty.** A person who violates or refuses or neglects to comply with the provisions of this chapter or any rule or order of the department adopted or made pursuant to this chapter is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day of a continuing violation constitutes a separate offense.

Section 17. **Deposit of penalties and costs.** All penalties and costs collected under this chapter must be deposited in the state general fund.

Section 18. **Entry upon land.** Any employee or agent of the department authorized by the director of the department may enter upon any land to carry out the purposes of this chapter. The department or its agent shall give reasonable notice to the landowner of the intention to enter upon the land.

Section 19. **Legal assistance.** When requested by the department, the attorney general or the county attorneys within their respective counties

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shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

Section 20. **Rules.** The department may adopt rules to implement the provisions of this chapter, including but not limited to rules to:

(1) classify high-hazard dams and reservoirs;

(2) review, approve, and issue permits;

(3) govern inspections under this chapter;

(4) establish safety standards for the design, construction, operation, and maintenance of high-hazard dams and reservoirs;

(5) establish emergency preparedness and warning procedures; and

(6) establish fees commensurate with costs to cover inspections under this chapter.

Section 21. **Codification instruction.** Sections 1, 2, and 6 through 20 are intended to be codified as an integral part of Title 85, chapter 15, and the provisions of Title 85, chapter 15, apply to sections 1, 2, and 6 through 20.

Section 22. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Repealer.** Section 85-15-103, MCA, is repealed.

Approved April 16, 1985.

CHAPTER NO. 502

[SB 402]

AN ACT AUTHORIZING A LUMP-SUM ADVANCE SETTLEMENT IN CERTAIN WORKERS' COMPENSATION CASES; PROVIDING THAT THE WORKERS' COMPENSATION JUDGE HAS JURISDICTION OVER A SETTLEMENT CONTROVERSY; AND AMENDING SECTION 39-71-737, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-737, MCA, is amended to read:

"39-71-737. Compensation to run consecutively — exceptions. *(1)* Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period. *However, subject to the provisions of 39-71-741, this section does not prevent:*

(a) the payment of a lump-sum advance settlement against projected future permanent partial indemnity benefits while a claimant is receiving temporary total disability benefits; or

(b) a settlement of a combination of different classes of disability benefits into a lump sum or into a combination of periodic and lump-sum payments.

(2) A controversy between a claimant and an insurer regarding a settlement authorized under this section is a dispute for which the workers' compensation judge has jurisdiction to make a determination."

Section 2. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 16, 1985.

CHAPTER NO. 503

[SB 406]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE INTERNAL ORGANIZATION OF THE DEPARTMENT OF JUSTICE; SUBSTITUTING THE TERMS "DEPARTMENT OF JUSTICE" OR "DEPARTMENT" FOR TERMS RELATING TO SPECIFIC DIVISIONS OR BUREAUS WITHIN THE DEPARTMENT; AMENDING SECTIONS 2-15-2005, 44-2-111, 44-3-104 THROUGH 44-3-106, 44-3-201, 44-3-303, 53-4-505, AND 61-3-108, MCA; AND REPEALING SECTIONS 2-15-2002 THROUGH 2-15-2004, 44-2-101, 44-2-102, AND 44-3-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **"Division of motor vehicles" changed to "department of justice".** Wherever the term "division of motor vehicles", "motor vehicle division", or "division", meaning division of motor vehicles, appears in Title 44, chapter 1, or Title 61, it is changed to "department of justice" or "department" meaning the department of justice.

Section 2. **"Bureau of criminal investigation" changed to "department of justice".** Wherever the term "bureau of criminal investigation" or "bureau", meaning bureau of criminal investigation, appears in Title 44, chapter 2, it is changed to "department of justice" or "department" meaning the department of justice.

Section 3. **"Fire marshal bureau" changed to "department of justice".** Wherever the term "fire marshal bureau" or "bureau", meaning fire marshal bureau, appears in Title 50, chapter 3, it is changed to "department of justice" or "department" meaning the department of justice.

Section 4. Section 2-15-2005, MCA, is amended to read:

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"2-15-2005. State fire marshal — advisory council. (1) There is a *state* fire marshal in the department of justice *who* is under the supervision and control of the attorney general.

(2) A person appointed state fire marshal shall have:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a 2-year associate degree in fire protection engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(3) The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 2-15-122."

Section 5. Section 44-2-111, MCA, is amended to read:

"44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed to *conduct criminal investigations and perform related duties* within the attorney general's office."

Section 6. Section 44-3-104, MCA, is amended to read:

"44-3-104. Functions of department. The *forensics* functions of the *department of justice* include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology."

Section 7. Section 44-3-105, MCA, is amended to read:

"44-3-105. Authority to accept grants. The *department of justice* is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter."

Section 8. Section 44-3-106, MCA, is amended to read:

"44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ such personnel as may be necessary to *perform the functions of this chapter.*"

Section 9. Section 44-3-201, MCA, is amended to read:

"44-3-201. State medical examiner. *A state* medical examiner *must be appointed by the attorney general to administer department functions assigned by 44-3-104. The state medical examiner may perform such other duties as may be assigned by the attorney general. The state medical examiner must be a forensic pathologist qualified and certified by the American board of pathology.*"

Section 10. Section 44-3-303, MCA, is amended to read:

"44-3-303. Duties of laboratory director. The laboratory director shall:

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(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the *department*."

Section 11. Section 53-4-505, MCA, is amended to read:

"**53-4-505. Fire safety — certification required.** (1) The state fire marshal of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the fire marshal of the department of justice or *his* designee, indicating that fire safety rules have been met."

Section 12. Section 61-3-108, MCA, is amended to read:

"**61-3-108. Disposition of fees — use.** (1) All fees payable to the *department under this title, unless otherwise provided,* shall be deposited in a motor vehicle recording account of the state special revenue fund.

(2) Funds deposited in the motor vehicle recording account of the state special revenue fund may be expended for the following purposes:

(a) to pay the salaries and operating expenses *associated with performing duties under this title,* including the manufacture and delivery of license plates;

(b) to fund the forensic science *activities* of the department of justice;

(c) to fund the Montana law enforcement academy;

(d) to fund the law enforcement teletype system of the department of justice;

(e) to fund the Montana criminal law information center to the extent that all of the above programs have been previously funded and funds remain available."

Section 13. **Code commissioner instructions.** (1) Wherever the terms "division of motor vehicles", "motor vehicle division", or "division" meaning division of motor vehicles appear in legislation enacted in the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(2) Wherever the terms "bureau of criminal investigation" or "bureau" meaning the bureau of criminal investigation appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to

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change the term to "department of justice" or "department" meaning the department of justice.

(3) Wherever the terms "fire marshal bureau" or "bureau" meaning the fire marshal bureau appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(4) Wherever the terms "division of forensic sciences" or "division" meaning the division of forensic sciences appears in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

Section 14. **Repealer.** Sections 2-15-2002 through 2-15-2004, 44-2-101, 44-2-102, and 44-3-103, MCA, are repealed.

Approved April 16, 1985.

CHAPTER NO. 504

[HB 95]

AN ACT PROVIDING THAT AN ACTION FOR LACK OF GOOD FAITH IN HANDLING OR SETTLEMENT OF A CLAIM MUST BE TRIED SEPARATELY FROM A TRIAL OF THE UNDERLYING CLAIM; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Separation of trial of claim for lack of good faith from trial of underlying claim.** The trial of a claim or action against an insurer for lack of good faith in its handling or settlement of an insurance claim may not be consolidated with a trial of the underlying claim if:

(1) the lack of good faith claim is against a party different from the party against whom the underlying claim is made; and

(2) the parties have not stipulated to consolidation of the trial of the lack of good faith claim and the underlying claim.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33.

Section 3. **Applicability.** This act applies to actions filed on or after the effective date of this act against insurers for lack of good faith in handling or settlement of claims.

Approved April 16, 1985.

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CHAPTER NO. 505

[HB 183]

AN ACT TO REQUIRE THAT A NONSMOKING AREA BE DESIGNATED IN EACH ENCLOSED WORK AREA MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION THEREOF; AMENDING SECTION 50-40-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reservation of smoking and nonsmoking areas in work areas in state and local government buildings.** In offices and work areas in buildings maintained by the state or a political subdivision thereof in which seven or more employees of the state or political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

Section 2. Section 50-40-104, MCA, is amended to read:

"50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105 *and as provided in [section 1]*, the proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; or

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment."

Approved April 16, 1985.

CHAPTER NO. 506

[HB 323]

AN ACT PROVIDING A CIVIL PENALTY FOR SHOPLIFTING.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the

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intention of converting the goods to his own use without having paid the purchase price thereof is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of social and rehabilitation services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

Approved April 16, 1985.

CHAPTER NO. 507

[HB 363]

AN ACT LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of 27-1-221 is to deter claims for punitive or exemplary damages that are not clearly based in fact, and to that end, the legislature intends for 27-1-221 to be used in combination with early and ready application and granting of motions for summary judgment pursuant to Rule 56 of the Montana Rules of Civil Procedure where such claims are not based in fact, and the application of the sanctions provided for in Rule 11 of the Montana Rules of Civil Procedure against those parties responsible for making such claims.

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. When exemplary damages allowed. *(1) Subject to subsection (2), in* any action for a breach of an obligation not arising from contract where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant.

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(2) The jury may not award exemplary or punitive damages unless the plaintiff has proved all elements of the claim for exemplary or punitive damages by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.

(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk.

(4) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.

(5) A defendant is guilty of oppression if he intentionally causes cruel and unjust hardship by:

(a) misuse or abuse of authority or power; or

(b) taking advantage of some weakness, disability, or misfortune of another person.

(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.

(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in section (6)(b)."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Applicability.** This act applies to any claim arising after the effective date of this act.

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 2, and the provisions of Title 27, chapter 1, part 2, apply to section 1.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 16, 1985.

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CHAPTER NO. 508

[HB 420]

AN ACT INCREASING ALLOWABLE LICENSE FEES OF AIRCRAFT, AIRMEN, AND INSTRUCTORS; AMENDING SECTION 67-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-3-101, MCA, is amended to read:

"67-3-101. Regulation and licensing — general provisions. In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding *$10*. It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than *$10* and for the renewal of a license not more than *$10*.

(3) upon notification by the *federal aviation administration* that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, temporarily or permanently revoke the license or certificate of registration issued for that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action."

Approved April 16, 1985.

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CHAPTER NO. 509

[HB 436]

AN ACT REQUIRING MEMBERSHIP OF ONE CONSERVATION DISTRICT BOARD MEMBER ON EACH CITY-COUNTY PLANNING BOARD IN THE STATE; AND PROVIDING AN EXCEPTION; AMENDING SECTION 76-1-201, MCA.

WHEREAS, House Bill 275, Chapter 349, Laws of 1973, amended section 11-3810(2), R.C.M. 1947, to require membership of conservation district board members in Montana on all county planning boards; and

WHEREAS, most subdivisions are close to the major metropolitan areas or within the 4.5-mile limits; and

WHEREAS, conservation districts are charged with stopping erosion caused by either runoff or wind erosion; and

WHEREAS, many states require a sign-off of subdivision plats by the conservation district boards.

THEREFORE BE IT RESOLVED, that section 76-1-201, MCA, be amended to require membership of a conservation district board member on each city-county planning board.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-201, MCA, is amended to read:

"76-1-201. Membership of city-county planning board. *(1) Except as provided in subsection (2), a* city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for *from the members of the board of supervisors of a conservation district provided for in 76-15-311.*

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(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council."

Approved April 16, 1985.

CHAPTER NO. 510

[HB 474]

AN ACT CLARIFYING THE REQUIREMENTS TO QUALIFY FOR A MORTICIAN'S OR INTERN MORTICIAN'S LICENSE; PROVIDING THAT VIOLATION OF RULES ON UNPROFESSIONAL CONDUCT ADOPTED BY THE BOARD MAY BE GROUNDS FOR REFUSING TO GRANT, SUSPENDING, OR REVOKING A MORTICIAN'S OR FUNERAL DIRECTOR'S LICENSE; AMENDING SECTIONS 37-19-302, 37-19-304, AND 37-19-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-19-302, MCA, is amended to read:

"37-19-302. License required for practice of mortuary science — qualifications of applicants. *(1)* The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the *board* is prohibited. *A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.*

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed *90 quarter credits or the equivalent of study* at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; *and*

(e) serve a 1-year internship under the supervision of a *licensed* mortician in a licensed mortuary in Montana *after passing the examination provided for in subsection (2)(d).*

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board."

Section 2. Section 37-19-304, MCA, is amended to read:

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"37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination *provided for in 37-19-302 shall*, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a *licensed* mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license."

Section 3. Section 37-19-311, MCA, is amended to read:

"37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(2) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(3) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(a) which does not properly protect the rights of the public;

(b) where there is any element of fraud; or

(c) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed;

(4) if the applicant or licensee violates rules adopted by the board which define unprofessional conduct on the part of applicants and licensees."

Section 4. **Extension of authority.** Any existing authority of the board of morticians to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 16, 1985.

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CHAPTER NO. 511

[HB 488]

AN ACT TO ESTABLISH A MONTANA-WESTERN CANADIAN PROVINCES BOUNDARY ADVISORY COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy and findings.** (1) The legislature finds that there exists between Montana and its neighboring Canadian provinces of Alberta, British Columbia, and Saskatchewan a legacy of shared experience, cultural traditions, economic conditions, and common goals, including shared recognition of the need to effectively use and conserve our natural resources and to pursue economic development within a framework of responsible environmental regulation.

(2) The legislature further finds that Montana enjoys with these western provinces an increasing level of cooperation, commerce, exchange of information, and other interaction as the opportunity and need for this interaction are increasingly recognized by both public and private officials.

(3) The legislature declares that it intends to promote the pursuit of common goals and to further strengthen relations in all areas between Montana and the Canadian provinces.

(4) The legislature further declares that one of the best ways of pursuing these common goals and of strengthening these relations is to encourage understanding and cooperation between Montana government and the governments of the Canadian provinces and thus between the citizens of Montana and those of the western provinces of Canada.

Section 2. **Montana-western Canadian provinces boundary advisory committee — creation.** There is established a Montana-western Canadian provinces boundary advisory committee, which shall be concerned with strengthening all areas of regional cooperation between the government of Montana and the governments of Montana's neighboring Canadian provinces, and with encouraging economic, cultural, and educational exchange between Montana and these provinces.

Section 3. **Committee membership.** The committee consists of nine members, including the governor or his designee, who shall act as chairman. Four members must be chosen by the legislative council, including two from the senate and two from the house of representatives. The vice-chairman must be one of the legislative members. Four executive branch members must be appointed by the governor, including one each from agencies responsible for issues related to agriculture; water and natural resources; economic development, trade, and tourism; and research and education.

Section 4. **Committee functions.** (1) The Montana-western Canadian provinces boundary advisory committee may meet with an appropriate body representing the provinces of Alberta, British Columbia,

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Saskatchewan, or a combination thereof for the purpose of discussion of matters of mutual concern. The committee shall encourage and assist the government of Montana to develop and maintain friendly contact with the governments of neighboring Canadian provinces by correspondence, conference, and other means.

(2) The committee shall cooperate with appropriate agencies of state government in performing its functions and shall endeavor to involve those agencies in its discussions with provincial representatives as appropriate.

Section 5. **Organizational support — compensation.** (1) The legislative council, other legislative agencies, and executive branch agencies shall assist the committee as required to carry out its functions.

(2) The expenses incurred by the executive branch members and the legislative branch members in the performance of their duties under this section must be paid from funds appropriated for the respective offices and agencies.

(3) Legislative committee members are entitled to compensation and expenses as provided in 5-2-302.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 16, 1985.

CHAPTER NO. 512

[SB 283]

AN ACT TO GENERALLY REVISE THE BONDING PROGRAMS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE WATER DEVELOPMENT PROGRAM; TO AUTHORIZE COUNTY WATER OR SEWER DISTRICTS, RURAL SPECIAL IMPROVEMENT DISTRICTS, AND THE BOARD OF EXAMINERS TO ISSUE TEMPORARY OBLIGATIONS IN ANTICIPATION OF THE ISSUANCE OF BONDS; TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM TO MAKE IT COMPATIBLE WITH THE WATER DEVELOPMENT PROGRAM; AMENDING SECTIONS 7-7-109, 17-5-703, 17-5-711, 17-5-713 THROUGH 17-5-715, 17-5-718, 85-1-332, 85-1-604, 85-1-605, 85-1-610, 85-1-617, 85-1-619, 85-1-623, 90-2-121, 90-2-123, AND 90-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-109, MCA, is amended to read:

"7-7-109. Sale of notes in anticipation of federal or state revenue. (1) As used in this section, the following definitions apply:

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(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Political subdivision" means a county, city, town, school district, irrigation district, *rural special improvement district,* special improvement district, *county water or sewer district,* or any other political subdivision of the state, but does not include the state or any board, agency, or commission of the state.

(c) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(2) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law and the political subdivision has applied for a grant or loan of state or federal funds to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant or loan, in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date such notes are issued.

(3) The proceeds of the grant or loan, when received, shall be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) Any amount of the notes which cannot be paid at maturity from the proceeds of the grant or loan or from any other funds appropriated by the governing body for the purpose shall be paid from the proceeds of bonds to be issued and sold before the maturity date, or if sufficient funds are not available for payment in full of the notes at maturity, those bondholders may, *in exchange,* require the issuance of *long-term* bonds. The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued, the political subdivision must receive a written commitment for a grant or loan in an amount equal to the remaining estimated costs and must by resolution provide for the fulfillment of the conditions of the commitment."

Section 2. Section 17-5-703, MCA, is amended to read:

"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a coal severance tax permanent fund; and

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(c) a coal severance tax income fund.

(2) *The* state treasurer shall *from time to time* transfer to the coal severance tax permanent fund all money in the coal severance tax bond fund except the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next *two* ensuing semiannual payment *dates.*"

Section 3. Section 17-5-711, MCA, is amended to read:

"**17-5-711. Trust indenture.** In the discretion of the board of examiners, a series of bonds *or notes issued under this part* may be secured by a trust indenture by and between the board of examiners and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary."

Section 4. Section 17-5-713, MCA, is amended to read:

"**17-5-713. Personal liability — suit to compel performance.** (1) The members of the board of examiners and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any coal severance tax bond *or bond anticipation note* issued by the board of examiners.

(2) Any holder of coal severance tax bonds or any person or officer being a party in interest, subject to any applicable coal severance tax agreements or trust indentures, may sue to enforce and compel the performance of the coal severance tax bond provisions as set out in this part."

Section 5. Section 17-5-714, MCA, is amended to read:

"**17-5-714. Negotiability of bonds.** *Bonds or notes* issued *under this part* are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds."

Section 6. Section 17-5-715, MCA, is amended to read:

"**17-5-715. Signatures of board members.** In case any member of the board of examiners whose signature appears on bonds, *notes,* or coupons *issued under this part* ceases to be a member before the delivery of the bonds *or notes,* his signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery."

Section 7. Section 17-5-718, MCA, is amended to read:

"**17-5-718. Tax exemption of bonds — legal investments.** (1) All bonds *or notes issued under this part,* their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivisions or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

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(2) *Bonds or notes issued under this part* are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Section 8. **Bond anticipation notes — when issued — payment of principal and interest.** (1) When the board of examiners has been authorized by the legislature to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue temporary notes in anticipation of the receipt of proceeds to be derived from the sale of the bonds. The notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued. As much of the proceeds of the bonds, when issued, must be credited to the note debt service fund as may be needed for payment of the notes, with interest, when due.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as needed. Notes must be authorized by the board of examiners and contain such terms and details as may be provided by resolution of the board. Each resolution of the board of examiners authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for notes to be issued and sold, in whole or in part, from time to time. The board may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either within or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

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(c) the refunding of the notes, from time to time, without further action by the board, unless the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

Section 9. Section 85-1-332, MCA, is amended to read:

"**85-1-332. Disposition of moneys collected.** *(1)* For the purpose of carrying out the provisions of this chapter and such other water resource authority, powers, and duties as are conferred upon the department by law, the following moneys shall be deposited in the water development state special revenue account created by 85-1-604:

(a) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(b) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement thereof as provided by law;

(c) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(d) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities, or towns or their proportion of the cost thereof or from any other sources;

(e) except as otherwise provided by law, all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(f) except as otherwise provided by law, all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project.

(2) All sums of money donated or contributed by the federal government or any department or agency thereof shall be deposited in a federal special revenue account."

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Section 10. Section 85-1-604, MCA, is amended to read:

"85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account. (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) There shall be paid into the water development state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(e) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; *and*

(f) all interest income earned on proceeds of water development bonds.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

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(vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) through *(f)* of subsection (2) and only that amount may be appropriated from the account for loans and grants for water development projects and activities; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 11. Section 85-1-605, MCA, is amended to read:

"85-1-605. Grants, loans, and bonds for state and local government assistance. (1) The department may recommend to the legislature that grants and loans be made from coal severance tax proceeds deposited in the water development state special revenue account, that loans be made from water development bond proceeds deposited in the water development account, and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans it finds consistent with the policies and purposes of the program.

(2) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the funds available for grants from the water development special revenue account in any biennium to be used for emergencies. These emergency projects must be approved by the department and be defined as those projects which, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating such funds, the department shall inform the legislative finance committee of the legislature.

(3) The grants and loans provided for by this section may be made for the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development, or protection of the water and related agricultural, land, fish, wildlife, and water recreation resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for and the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature."

Section 12. Section 85-1-610, MCA, is amended to read:

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"85-1-610. Evaluation of grants and loans to private persons. The department shall consider the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for water development projects and activities that are eligible for funding under 85-1-609:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A water development project or activity that will be used as part of a family farm shall be given preference. A family farm is one devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A water development project or activity that will utilize or develop water reserved under 85-2-316 shall be given preference. *An activity includes all necessary work associated with a project, beginning with application preparation through the implementation of a water reservation by a qualified state applicant.*

(4) The department, to the extent practicable, shall attempt to achieve geographic balance in the promotion of water development projects and activities through the awarding of loans and grants to private persons.

(5) The extent to which the water development project or activity will fully utilize water resources and promote the conservation and efficient use of the water resource shall be evaluated and considered.

(6) Projects or activities that could not be accomplished without the assistance of a loan or grant shall be given preference.

(7) The department shall give due consideration to any other factor that, in the department's judgment, is important to the evaluation of the water development project or activity in light of the purposes, policies, and objectives of the water development program."

Section 13. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing bonds. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such

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earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section *[and section 8]*.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds *and notes* and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, *notes,* and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds *and notes* must be issued under the great seal of the state of Montana. The bonds, *notes,* and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds *and notes* issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds *or notes* issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development state special revenue account pursuant to 85-1-604. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 14. Section 85-1-619, MCA, is amended to read:

"85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the water development debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the water

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development debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the water development debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to water development bonds, *and for bonds issued prior to 1985,* to accumulate a reserve for the further security of such payments.

(3) After the reserve provided for in subsection (2) *for bonds issued prior to 1985* has been accumulated in the water development debt service fund, money at any time received in the water development debt service fund in excess of that amount must be transferred by the treasurer to the water development state special revenue account."

Section 15. Section 85-1-623, MCA, is amended to read:

"85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed *$10* million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program."

Section 16. Section 90-2-121, MCA, is amended to read:

"90-2-121. Issuing bonds. (1) Within the limits authorized by 90-2-127 and within the further limitations in this section, the board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance the renewable resource development program. The full faith and credit and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the board of examiners upon request of the board of natural resources and conservation in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be

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established in such manner that the funds then specifically pledged and appropriated by law to the debt service fund will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder *and interest earned on such proceeds*, other than refunding bonds, shall be deposited in the renewable resource development account. All proceeds of refunding bonds shall be deposited in the debt service fund and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms."

Section 17. Section 90-2-123, MCA, is amended to read:

"90-2-123. Debt service fund. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the debt service fund shall be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource development bonds.

(3) *Money* at any time received in the debt service fund in excess of *the* amount *required by subsection (2)* shall be transferred by the treasurer to the renewable resource development account."

Section 18. Section 90-2-125, MCA, is amended to read:

"90-2-125. Renewable resource development account. The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the renewable resource development account any

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tax, charge, fee, rental, or other income from any source, *including but not limited to renewable resource development bond proceeds, interest earned on the bond proceeds, and any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under 90-2-121.*"

Section 19. **Remedial character.** Section 1 of this act is remedial in character, and nothing therein may be considered to imply that authority for the taking of any action therein expressly authorized did not previously exist.

Section 20. **Codification instruction.** Section 8 is intended to be codified as an integral part of Title 17, chapter 5, part 7, and the provisions of Title 17, chapter 5, part 7, apply to section 8.

Section 21. **Applicability.** Section 10 applies retroactively, within the meaning of 1-2-109, to all occurrences after July 1, 1981.

Section 22. **Requirements for approval of state debt — severability.** Because section 15 authorizes the creation of state debt, a vote of two-thirds of the members of each house is required for enactment of section 15. If section 15 is not approved by the required vote, section 15 is void, and the remaining sections of this act are valid and remain in effect in all valid applications upon enactment.

Section 23. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1985.

CHAPTER NO. 513

[SB 309]

AN ACT ALLOWING A TAX CREDIT FOR THE INSTALLATION OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; EXTENDING THE DATE FOR WHICH THE ENERGY TAX CREDIT MAY BE TAKEN TO DECEMBER 31, 1992; AMENDING SECTIONS 15-32-102, 15-32-201, AND 15-32-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"**15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(5) "Low emission wood or biomass combustion device" means a stove or furnace or a catalytic converter added to a stove or furnace which burns wood or other nonfossil biomass and which has an emission rate of less than 6 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves as adopted by the department of health and environmental sciences pursuant to 15-32-203.

(6) "Recognized nonfossil forms of energy generation" means a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources, for the production of electric power from solid wood wastes, *a low emission wood or biomass combustion device,* and also means a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area."

Section 2. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit — to whom available. A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to *January 1, 1993,* or who acquires title to a dwelling prior to *January 1, 1993, that* is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of such system, including installation costs, less grants received, against the income tax liability imposed against such taxpayer pursuant to chapter 30."

Section 3. Section 15-32-203, MCA, is amended to read:

"15-32-203. Department to make rules. *(1)* The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

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(2) The department of health and environmental sciences shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and maintain a list of such devices that are certified."

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984, and before January 1, 1993.

Approved April 17, 1985.

CHAPTER NO. 514

[SB 337]

AN ACT MODIFYING THE PROCEDURE FOR COLLECTING UNPAID UNEMPLOYMENT COMPENSATION CONTRIBUTIONS; AMENDING SECTIONS 39-51-1303 AND 39-51-1304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the department may in its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 2. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid contributions — levy and execution. *Unpaid contributions have the effect of a judgment against the employer, arising at the time the contributions are due. The department may issue a lien setting forth the amount of contributions due and accrued interest and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien."*

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Section 3. **Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 17, 1985.

CHAPTER NO. 515

[SB 420]

AN ACT AMENDING THE LAW RELATING TO THE IDENTIFICATION OR SEGREGATION OF MONEYS OR FUNDS IN THE STATE FUND STRUCTURE; REQUIRING EACH FEDERAL GRANT OR OTHER FEDERAL MONEY WITHIN THE GOVERNMENTAL, PROPRIETARY, AND FIDUCIARY FUND CATEGORIES OR WITHIN A SUBFUND OR ACCOUNT OF SUCH FUNDS TO BE IDENTIFIABLE WITHIN THE FUND; REQUIRING ACCOUNTINGS OF THE INCOME AND EXPENDITURES OF SUCH GRANT MONEY; PROVIDING A TRANSITION PERIOD FOR FEDERAL HIGHWAY FUNDS; PROVIDING THAT TAXES COLLECTED BY THE STATE FOR DISTRIBUTION TO LOCAL GOVERNMENTS ARE TO BE ACCOUNTED FOR IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTION 17-2-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-103, MCA, is amended to read:

"17-2-103. Previous definitions of funds — identification or segregation of moneys and funds. (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds which are inconsistent with the definitions found in this part.

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of moneys in the state treasury by means of a separate treasury fund shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1)(a) through (1)(c) must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each such grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by the state that, pursuant to a statute, are to be wholly or partially allocated or distributed to units of local government, school districts, authorities, or other local governmental entities shall be accounted for in the state special revenue fund established in 17-2-102."

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Section 2. **Transition — effective date.** (1) The provisions of 17-2-103(3) are not applicable to federal funds received by the department of highways for or on behalf of the state for the construction, reconstruction, repair, and maintenance of highways in the state until July 1, 1987.

(2) This act is effective July 1, 1985.

Approved April 17, 1985.

CHAPTER NO. 516

[HB 101]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO MOTORCYCLES; REPLACING THE PRESENT TAXATION OF MOTORCYCLES WITH A FEE IN LIEU OF TAX; DEFINING "QUADRICYCLE"; MAKING MOTORCYCLE LAWS APPLICABLE TO QUADRICYCLES; AMENDING SECTIONS 15-6-138, 15-6-201, 15-8-111, 15-8-201, 15-8-202, 15-24-301, 15-30-121, 15-31-114, 15-50-207, 31-1-202, 45-6-308, 61-3-301, 61-3-303, 61-3-313, 61-3-321, 61-3-332, 61-3-402, 61-3-403, 61-3-501, 61-3-503, 61-3-504, 61-3-509, 61-3-701, 61-4-101 THROUGH 61-4-103, 61-5-106, 61-5-107, 61-5-110, 61-5-111, 61-6-303, 61-8-359, 61-9-203, 61-9-205, 61-9-206, 61-9-220, 61-9-225, 61-9-303, 61-9-304, 61-9-309, 61-9-312, 61-9-417, 61-9-418, AND 61-9-421, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Quadricycle.** "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor of less than 300 cubic centimeters capable of producing not more than 35 horsepower. The term does not include golf carts.

Section 2. **Fee in lieu of tax for motorcycles and quadricycles.** (1) There is a fee in lieu of property tax imposed on motorcycles and quadricycles. The fee is in addition to annual registration fees.

(2) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute inventory of the dealership.

Section 3. **Schedule of fees for motorcycles and quadricycles.** (1) The owner of a motorcycle or quadricycle shall pay a fee based on the age and engine size of the vehicle as follows:

	Under 200 cc	200 cc to under 750 cc	750 cc and over
Less than 4 years old	$16	$40	$80
4 to 8 years old	$ 8	$20	$40
over 8 years old	$ 4	$10	$20

(2) The age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

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Section 4. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) watercraft;

(e) all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax;

(f) aircraft;

(g) all-terrain vehicles *not registered under 61-3-301*;

(h) harness, saddlery, and other tack equipment;

(i) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and

(j) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 5. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

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(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles;

(m) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

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(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 6. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in classes four through eleven is the percentage of market value established for each class of property in 15-6-134 through 15-6-141.

(5) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

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(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2), 15-6-132, and 15-6-133 for each class of property."

Section 7. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;

(d) motorcycles and quadricycles;

(e) livestock;

(f) property defined in 61-1-104(2) as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(g) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(3) Credits must be assessed as provided in 15-1-101(1)(c)."

Section 8. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment. (1) (a) The department or its agent must, in each year, ascertain and assess all motor vehicles other than automobiles, trucks having a rated capacity of three-quarters of a ton or less, *motorcycles, quadricycles,* motor homes, travel trailers, or mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the

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vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(b) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(c) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(d) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(2) In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner."

Section 9. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (6), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Any motor vehicle not subject to the light vehicle license fee *or a fee in lieu of tax* brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for

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transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for the calendar year in which the fee is collected. The machines shall be subject to taxation under class eight only if they are sold in Montana.

(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, *motorcycles, or quadricycles.* These vehicles are subject to the fee provided for in 61-3-532 *or [section 2].*"

Section 10. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974, except that:

(a) the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse;

(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal

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Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year;

(7) fees in lieu of taxes on motorcycles and quadricycles, as provided by [section 2], paid during the taxable year."

Section 11. Section 15-31-114, MCA, is amended to read:

"**15-31-114. Deductions allowed in computing income.** In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following

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the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

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(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) Light vehicle license fees, as provided by 61-3-532, *and fees in lieu of taxes for motorcycles and quadricycles, as provided by [section 2]*, paid within the year.

(7) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(8) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(9) In lieu of the deduction allowed under subsection (8), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (9)."

Section 12. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld

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or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes, *fees in lieu of taxes on motorcycles or quadricycles,* or light vehicle license fees, as provided by 61-3-532, paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the personal property tax or light vehicle license fee credit against the license fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit."

Section 13. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

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(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(g) "Motor vehicle" means any new or used automobile, motorcycle, *quadricycle,* truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or

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for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 14. Section 45-6-308, MCA, is amended to read:

"45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, *quadricycle,* motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it."

Section 15. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state unless such vehicle is properly registered and has the proper number plates conspicuously displayed, one

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on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, *quadricycles,* and motorcycles shall have but one number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person shall purchase or display on a vehicle any license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty set out in 61-3-601."

Section 16. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

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(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed;

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration and/or the license fee imposed by 61-3-532; or

(iii) in the case of a *motorcycle, quadricycle,* motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application.

(4) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the county treasurer."

Section 17. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102(7) subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 10-2-301, 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, *quadricycles,* and *motor-driven cycles*;

(6) special mobile equipment as defined in 61-1-104(2)."

Section 18. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles *and quadricycles*, $2;

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(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, shall pay a fee of $15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year shall be one-half of the regular fee.

(5) An additional fee of $2 per year for each registration of a vehicle shall be collected as a registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the state special revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332(7), or 61-3-335."

Section 19. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle *or quadricycle* type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle *or quadricycle* type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only

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(including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the division may designate.

(2) All number plates for motor vehicles shall be issued for a minimum period of 4 years, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the division shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(3) In the case of motorcars and trucks, number plates shall be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the division.

(4) The distinctive registration numbers shall begin with a number one or with a letter-number combination such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the division, provided that all county and registration numbers shall be of equal height.

(5) For the use of tax-exempt motor vehicles that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

(a) For vehicles owned by the state the division may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature and will be replaced by the division at such time when the physical condition of numbered plates requires same.

(b) For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the division may designate, the letter

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"X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number one and be numbered consecutively.

(6) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532 and tax exempt trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" shall appear for plates assigned to vehicles of the motorcycle *or quadricycle* type.

(7) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle *or quadricycle* type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- *or quadricycle*-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(8) For the purpose of this chapter, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties shall be assigned numbers by the division as they may be formed, beginning with the number 57."

Section 20. Section 61-3-402, MCA, is amended to read:

"61-3-402. Personalized license plates authorized. Any person who is the registered owner of a motor vehicle, a truck, motor home, camping trailer, motorcycle, *quadricycle,* or other vehicle for the owner's personal use registered with the division or who makes application for original registration of a motor vehicle may upon payment of the fee prescribed in 61-3-406 apply to the division for personalized license plates in the manner prescribed in 61-3-405, which plates shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter."

Section 21. Section 61-3-403, MCA, is amended to read:

"61-3-403. Color and design of personalized plates — county designation. (1) The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight

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positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, *quadricycle,* or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the division shall provide nonremovable stickers bearing the appropriate county designation which must be affixed to the license plates in use in accordance with instructions by the division."

Section 22. Section 61-3-501, MCA, is amended to read:

"61-3-501. When vehicle taxes and fees are due. (1) Property taxes, new car taxes, light vehicle license fees, and fees in lieu of tax on a *motorcycle, quadricycle,* motor home, or travel trailer must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes, light vehicle license fees, or the fee in lieu of property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes or the fee in lieu of tax due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period."

Section 23. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsection (1)(c), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

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(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide; and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid.

(2) The provisions of subsections (1)(a) through (1)(c) do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, *motorcycles, quadricycles,* motor homes, travel trailers, or mobile homes as defined in 15-1-101(1)."

Section 24. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of tax. The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of three-quarters of a ton or less, *motorcycle, quadricycle,* motor home, travel trailer, or mobile home as defined in 15-1-101(1), is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. The determination is entered on the application form in a space provided therefor."

Section 25. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes and fees in lieu of tax. The county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on *motorcycles, quadricycles,* motor homes, and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

Section 26. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the division. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201 through 15-8-203 or 15-24-301, or the payment of the light vehicle license fee as provided by 61-3-532, *or the fee in lieu of tax as provided by [section 2],* the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the division. The

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treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 27. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license. (1) Every person, firm, corporation, or association which, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the division a verified application for licensure as a dealer, on a blank to be furnished by the division for that purpose and containing the information required. The application and all of the information contained in it shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter specified. A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the division prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

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(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a recreational vehicle, trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle *or quadricycle* dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, *or quadricycles.* An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually."

Section 28. Section 61-4-102, MCA, is amended to read:

"61-4-102. Fees. (1) Upon making such application, the applicant shall pay to the division, in addition to the fees required of dealers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the division shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the division is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this chapter, it may thereupon issue the same.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

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(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the division.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates is entitled to purchase demonstrator plates at a cost determined by the division to offset the cost of production. Demonstrator plates shall be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the division.

(b) dealers in motorcycles, *quadricycles*, and trailers, including house-trailers, $45.

(3) If any dealer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

(4) A dealer in motor vehicles, recreational vehicles, or trailers who shall maintain more than one place of business or who shall maintain any branch establishment or establishments must register and pay a registration or license fee for each such place of business or establishment.

(5) A new applicant for a used motor vehicle dealer license shall pay $300 to the division in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer and used to transport the dealer's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

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(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days."

Section 29. Section 61-4-103, MCA, is amended to read:

"61-4-103. Assignment of dealer plates. (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, recreational vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle- *or quadricycle*-type vehicle, the division shall assign to such dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with such sets of number plates as required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); the letters "RV" if the dealer is authorized to sell recreational vehicles; the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle *or quadricycle* type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the "D" plate or demonstrator plate, no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer may be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate or demonstrator plate is authorized to sell both new and used motor vehicles

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(including trucks and truck trailers), and such plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The division shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.

(4) Dealers properly licensed under this section are authorized to use and display dealer's license plates on any motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, "officers and employees" include only such persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and their spouses or such other persons upon whom the dealer has paid social security taxes as a full-time employee. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. Each dealer is accountable for each plate issued and shall certify quarterly to the division the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) If it shall appear to the satisfaction of the division, from information furnished to it by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one herein authorized, or is not qualified as a dealer under the requirements of this section, the division may revoke such dealer's license. No person, firm, corporation, or association shall, for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds)."

Section 30. Section 61-5-106, MCA, is amended to read:

"61-5-106. Instruction and traffic education permits and temporary licenses. (1) Any person satisfying the age requirements specified in 61-5-105(1) may apply to the division for an instruction permit. The division may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the division may issue such an instruction permit to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the division

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and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(2) The division upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the division even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle *or quadricycle* only when under the immediate and proximate supervision of an approved instructor.

(3) The division may in its discretion issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused."

Section 31. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Every application for an instruction permit, operator's or chauffeur's license, or motorcycle endorsement shall be made upon a form furnished by the division. *A motorcycle endorsement is required for the operation of a quadricycle.* Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application.

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the division shall request a copy of such applicant's driving record from such previous licensing jurisdiction. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 32. Section 61-5-110, MCA, is amended to read:

"61-5-110. Examination of applicants. The division shall examine every applicant for an operator's or chauffeur's license or motorcycle

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endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, *quadricycle,* or motorcycle. The division shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than 30 days from the date the application is received."

Section 33. Section 61-5-111, MCA, is amended to read:

"61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration — fees — disposition. (1) The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the division provides driver licensing services 3 days or more a week the division is responsible for sale of receipts and may not appoint an agent. The division, upon receipt of payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a photograph of the licensee in the size and form as prescribed by the division, a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. Five percent of the license fees collected by the county treasurer shall be deposited by the county treasurer for the use of the county general fund. In the event no agent is appointed under this section, 5% of the license fees collected by the division shall be retained by the division to defray the cost of handling.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight and may also in the division's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be considered to have applied for renewal of a Montana operator's or chauffeur's license if the application is made within 3 months of the expiration of his license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) Whenever the division issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional;

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otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(5) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. A license is not valid for the operation of a motorcycle *or quadricycle* until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(6) Fees for driver's licenses shall be as follows:

(a) driver's license — $2 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof.

(7) The county treasurer or other agent of the division collecting such fees shall retain 5% of each fee for the use of the county general fund and shall transmit the remainder to the state treasurer, who shall deposit to the credit of the state general fund all money received by him from the collection of the fees."

Section 34. Section 61-6-303, MCA, is amended to read:

"61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the division upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle *or quadricycle*;

(8) a vehicle moved solely by human or animal power."

Section 35. Section 61-8-359, MCA, is amended to read:

"61-8-359. Riding on motorcycles. (1) A person operating a motorcycle *or quadricycle* on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person; nor shall any other person ride on a motorcycle *or quadricycle* unless such motorcycle *or quadricycle* is designed to carry more

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than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle *or quadricycle* or the view of the operator.

(3) No person operating a motorcycle *or quadricycle* shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Sidesaddle" riding on a motorcycle *or quadricycle* is prohibited.

(5) Motorcycles *and quadricycles* are to be operated with lights on at all times when operated on any public highway or street, except that if the motorcycle is registered under 61-3-411 as a collector's item, it may be operated without lights from one-half hour before sunrise to one-half hour after sunset if persons and vehicles are clearly discernible at a distance of 500 feet.

(6) Not more than two motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles *and quadricycles*, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle *or quadricycle* upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application."

Section 36. Section 61-9-203, MCA, is amended to read:

"61-9-203. Headlamps on motor vehicles. (1) Every motor vehicle other than a motorcycle, *quadricycle,* or motor-driven cycle shall be equipped with at least two headlamps, with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every motorcycle, *quadricycle,* and motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter. If a motorcycle is registered under 61-3-411 as a collector's item, it need not be equipped with headlamps, but if it is not so equipped it may not be operated upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at a distance of 500 feet.

(3) Every headlamp upon every motor vehicle, including every motorcycle, *quadricycle,* and motor-driven cycle, shall be located at a height, measured from the center of the headlamp, of not more than 54 inches or less than 24 inches, to be measured as set forth in 61-9-202(2)."

Section 37. Section 61-9-205, MCA, is amended to read:

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"61-9-205. New motor vehicles to be equipped with reflectors. (1) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the taillamps or separately, two red reflectors, except that every motorcycle, *quadricycle,* and motor-driven cycle shall carry at least one reflector meeting the requirements of this section, and except that vehicles of the type mentioned in 61-9-208 shall be equipped with reflectors as required in those sections applicable thereto.

(2) Every such reflector shall be mounted on the vehicle at a height not less than 15 inches or more than 60 inches measured as set forth in 61-9-202(2) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from such vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance may be required of reflectors on certain types of vehicles."

Section 38. Section 61-9-206, MCA, is amended to read:

"61-9-206. Stop lamps — when required. From and after January 1, 1956, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle, *quadricycle,* or motor-driven cycle, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one stop lamp meeting the requirements of 61-9-218."

Section 39. Section 61-9-220, MCA, is amended to read:

"61-9-220. Multiple-beam road-lighting equipment. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles, *quadricycles,* or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(3) Every new motor vehicle, other than a motorcycle, *quadricycle,* or motor-driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped."

Section 40. Section 61-9-225, MCA, is amended to read:

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"61-9-225. Number of driving lamps required or permitted. (1) At all times specified in 61-9-201, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, *quadricycle,* or motor-driven cycle, except when such vehicle is parked, subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway."

Section 41. Section 61-9-303, MCA, is amended to read:

"61-9-303. Parking brakes — adequacy. Every such vehicle and combination of vehicles, except motorcycles, *quadricycles,* and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes."

Section 42. Section 61-9-304, MCA, is amended to read:

"61-9-304. Brakes required on all wheels — exceptions. Every vehicle shall be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers shall not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

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(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment as defined in 61-1-104;

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes. *However, a quadricycle,* motorcycle, or motor-driven cycle *must be* capable of complying with the performance requirements of 61-9-312."

Section 43. Section 61-9-309, MCA, is amended to read:

"61-9-309. Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer, and pole trailer, and every combination of such vehicles, except motorcycles, *quadricycles,* and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle."

Section 44. Section 61-9-312, MCA, is amended to read:

"61-9-312. Performance ability of brakes. (1) Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) developing a braking force that is not less than the percentage of its gross weight tabulated in subsection (3) for its classification;

(b) decelerating to a stop from not more than 20 miles per hour at not less than the feet per second per second tabulated in subsection (3) for its classification; and

(c) stopping from a speed of 20 miles per hour in not more than the distance tabulated in subsection (3) for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1% grade), dry, smooth, hard surface that is free from loose material.

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(3)

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating.....	52.8%	17	25
B-1 All motorcycles, *quadricycles,* and motor-driven cycles.....	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of than ten thousand (10,000) pounds or less.....	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds.....	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less.....	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating.....	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations.....	43.5%	14	40
D All other vehicles and combinations of vehicles.....	43.5%	14	50"

Section 45. Section 61-9-417, MCA, is amended to read:

"61-9-417. Headgear required for minor motorcycle riders. An operator and passenger under 18 years of age of any motorcycle *or quadricycle* operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear shall meet standards established by the department of justice."

Section 46. Section 61-9-418, MCA, is amended to read:

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"61-9-418. Motorcycle noise suppression devices. All motorcycles *or quadricycles* operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles *and quadricycles* operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle *or quadricycle*:

(1) any *cycle* manufactured prior to 1970	92 db(A)
(2) any *cycle* manufactured after 1969 but prior to 1973	88 db(A)
(3) any *cycle* manufactured after 1972 but prior to 1975	86 db(A)
(4) any *cycle* manufactured after 1974 but prior to 1978	80 db(A)
(5) any *cycle* manufactured after 1977 but prior to 1988	75 db(A)
(6) any *cycle* manufactured after 1987	70 db(A)"

Section 47. Section 61-9-421, MCA, is amended to read:

"61-9-421. Certain vehicles excepte Section 61-9-420 is not applicable to a vehicle that:

(1) is a motorbus, schoolbus, taxicab, moped, *quadricycle,* or motorcycle or is not required to be equipped with safety belts under 49 CFR 571 as it reads on January 1, 1984; or

(2) has a seating capacity as designated by the manufacturer of two persons and there are two persons 4 years of age or older in the vehicle."

Section 48. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to section 1.

(2) Sections 2 and 3 are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 2 and 3.

Section 49. **Extension of authority.** Any existing authority of the departments of revenue, highways, or justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 50. **Effective date.** This act is effective January 1, 1986.

Approved April 17, 1985.

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CHAPTER NO. 517

[HB 121]

AN ACT DIRECTING THE PUBLIC SERVICE COMMISSION TO PRESCRIBE A DECLINING BLOCK RATE STRUCTURE FOR ELECTRIC SERVICE WHEN COST-JUSTIFIED; CLARIFYING THE REQUIREMENTS FOR THE DESIGN OF UTILITY RATES; AMENDING SECTION 69-3-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-306, MCA, is amended to read:

"69-3-306. Classification of service. *(1)* The commission may prescribe classifications of the service of all public utilities. Such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

(2) The commission shall prescribe a declining block rate structure for electric service, when cost-justified."

Approved April 17, 1985.

CHAPTER NO. 518

[HB 235]

AN ACT TO REQUIRE AN ANESTHESIOLOGIST, ANESTHETIST, OR OTHER TRAINED PROFESSIONAL TO ADMINISTER AND MONITOR GENERAL ANESTHETICS DURING DENTAL PROCEDURES; TO GRANT THE BOARD OF DENTISTRY AUTHORITY TO ADOPT RULES REGULATING DENTAL ANESTHETICS AND DENTAL ADVERTISING; AMENDING SECTIONS 37-4-101 AND 37-4-205, MCA; AND PROVIDING IMMEDIATE AND DELAYED EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance,

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retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term general anesthetic does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

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(i) administers an anesthetic of any nature, *subject to the limitations provided in [section 2]*, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 2. **Limitations on the administration of general anesthetics and practices involving general anesthesia.** (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsections (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs

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and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

Section 3. Section 37-4-205, MCA, is amended to read:

"**37-4-205. Rulemaking.** The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. *Rules adopted under this section may include but are not limited to the following subjects:*

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising."

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to section 2.

Section 5. **Effective dates.** This act is effective January 1, 1986, except for this section and section 3, which are effective on passage and approval.

Approved April 17, 1985.

CHAPTER NO. 519

[HB 338]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE LICENSING AND REGULATION OF TITLE INSURANCE AGENTS AND THE REGULATION OF CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY; AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213, 33-17-1101, AND 33-17-1102, MCA; AND REPEALING SECTION 33-25-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 15], 33-25-101, and 33-25-102 may be cited as the "Montana Title Insurance Act".

Section 2. **Definitions.** As used in [sections 1 through 15], 33-25-101, and 33-25-102, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted

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for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title agent that is referred to it by a producer or associate having a financial interest in the title insurer or title agent.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property; or

(c) acting as broker, agent, or representative of a person described in subsection (8)(a) or (8)(b).

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(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) (a) "Title agent" means a person who holds a valid title agent's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) "Title agent" does not include an approved attorney.

(12) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title agent, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or agent, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (12)(a) through (12)(c) in a manner designed to evade the provisions of this title.

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(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

Section 3. **Application.** (1) [Sections 1 through 15], 33-25-101, and 33-25-102 apply to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) [Sections 1 through 15], 33-25-101, and 33-25-102 do not authorize the practice of law by a person who is not licensed to practice law in this state, and [sections 1 through 15], 33-25-101, and 33-25-102 do not authorize the commissioner to regulate the practice of law.

Section 4. **Abstracts of title distinguished from title insurance policy and preliminary report.** (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

Section 5. **Limitations on authority.** (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

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(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title agents or approved attorneys in the normal course of its business.

Section 6. **Underwriting standards — record retention.** (1) A title insurer may not issue a title insurance policy unless it, its title agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising thereunder.

Section 7. **Escrow, closing, or settlement services — title indemnification — maintenance of accounts — rules.** (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

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(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

Section 8. **Disapproval of agency contracts.** (1) The commissioner may disapprove a title agency contract between a title agent and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent. Factors the commissioner may consider in this determination include but are not limited to the agent's duties under the contract and the general level of amounts paid to or retained by other title agents in the state performing or assuming comparable duties.

(2) No person may act as a title agent under an agency contract that has been disapproved by the commissioner.

Section 9. **Report of claims.** A title agent must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

Section 10. **Refusal, suspension, or revocation of title agent's license.** (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent or may suspend or revoke a title agent's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

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(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a firm, corporation, or other business entity licensed as a title agent for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

Section 11. **Sharing of rate proceeds.** Title insurers and agents may share rate proceeds between or among themselves in any combination and may exchange business and share commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

Section 12. **Prohibited practices — referrals — splitting charges — exemptions.** (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

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(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

Section 13. **Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction.** (1) A person found to have violated the provisions of [section 12] is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on [section 12] and this section, the court may award to the prevailing party court costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of [section 12].

Section 14. **Prohibited practices — producer and associates — prohibition of favored agent or insurer.** No producer or associate may, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent. No title insurer or title agent may knowingly participate in a plan or transaction prohibited by this section.

Section 15. **Notice of issuance of mortgagee policy.** (1) A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title agent for at least 5 years after receipt.

Section 16. Section 33-2-108, MCA, is amended to read:

"33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) *and [section 5]*, an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

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(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer."

Section 17. Section 33-2-851, MCA, is amended to read:

"33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its *title* plant, *as defined in [section 2]*, and equipment and, with the commissioner's consent, in stock of abstract companies *and of title agents as defined in [section 2]*.

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such *title* plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 18. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

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(h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner, *except that the provisions of this subsection (5)(b) do not apply to title agents, as defined in [section 2]*;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) mechanical breakdown insurance agents."

Section 19. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at a place in this state reasonably accessible to the applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

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(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in [section 2], must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 20. Section 33-17-1101, MCA, is amended to read:

"**33-17-1101. Place of business — display of license — records.** (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, *except that title agents, as defined in [section 2], shall retain records as provided in [sections 6 and 15].*"

Section 21. Section 33-17-1102, MCA, is amended to read:

"**33-17-1102. Reporting and accounting for premiums.** (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. *Except for a title agent as defined in [section 2], if* the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law."

Section 22. **Repealer.** Section 33-25-103, MCA, is repealed.

Section 23. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 24. **Codification instruction.** Sections 1 through 15 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 15.

Section 25. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 17, 1985.

CHAPTER NO. 520

[HB 426]

AN ACT TO ESTABLISH CONDITIONS UNDER WHICH A STAY OF AN AGENCY DECISION MAY BE GRANTED; AMENDING SECTION 2-4-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

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(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it considers proper, *following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.*

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1985.

CHAPTER NO. 521

[HB 445]

AN ACT PROVIDING THAT IF A PERSON OBLIGATED TO PAY CHILD SUPPORT BECOMES DELINQUENT IN AN AMOUNT EQUAL TO THE TOTAL OF 6 MONTHS' SUPPORT PAYMENTS, THE COURT MAY ORDER THE OBLIGATED PERSON TO POST BOND OR OTHER SECURITY IN AN AMOUNT UP TO THE TOTAL OF 2 YEARS' SUPPORT PAYMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Security or guarantee to secure support.** (1) Upon verified application by a person authorized to enforce or collect a child support obligation, the department of revenue, or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guarantee for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guarantee, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guarantee for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing

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a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department determines an application for an order requiring security is not appropriate, it may not request the order.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 4, part 2.

Approved April 17, 1985.

CHAPTER NO. 522

[HB 475]

AN ACT MODIFYING THE AUTHORIZED ACTIVITIES OF CREDIT UNIONS; AUTHORIZING CERTAIN SOCIETIES, PARTNERSHIPS, AND CORPORATIONS TO OBTAIN LOANS FROM CREDIT UNIONS; REMOVING THE RESTRICTION AGAINST PROVIDING CHECKING ACCOUNT SERVICES; AUTHORIZING CREDIT UNIONS TO SERVE AS CUSTODIANS OR TRUSTEES OF RETIREMENT ACCOUNTS AND PENSION OR PROFIT-SHARING PLANS; AUTHORIZING CREDIT UNIONS TO ACT AS FISCAL AGENTS FOR FEDERAL, STATE, AND LOCAL GOVERNMENTS; GIVING CREDIT UNIONS THE OPTION OF APPOINTING, ELECTING, OR NOT HAVING A SUPERVISORY COMMITTEE; MODIFYING THE DUTIES OF CREDIT UNION DIRECTORS TO PURCHASE FIDELITY BONDS; MODIFYING THE LAW OF CREDIT UNION SHARES AND ACCOUNTS; PROVIDING CREDIT UNIONS THE OPTION OF OBTAINING PLANS OF PRIVATE SHARE INSURANCE; AMENDING SECTIONS 32-3-206, 32-3-305, 32-3-401, 32-3-403, 32-3-412, 32-3-417, AND 32-3-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-206, MCA, is amended to read:

"32-3-206. Authorized activities of credit unions. *Upon written application to the* director, *a* credit union *may* engage in any activity in

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which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include, but not by way of limitation, the power to do any act and own, possess, and carry as assets property of such character including stocks, bonds, or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in 32-3-304. *The director shall approve an activity if he finds that it fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the director disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.*"

Section 2. Section 32-3-305, MCA, is amended to read:

"**32-3-305. Societies — associations.** *(1).* Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals.

(2) No loan may be made to any member society, partnership, or corporation in an aggregate amount that is in excess of 5% of the credit union's shares and retained earnings. Total loans to member societies, partnerships, and corporations is limited to an aggregate amount of 15% of the credit union's shares and retained earnings."

Section 3. Section 32-3-401, MCA, is amended to read:

"**32-3-401. General powers.** A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter same;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the director;

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(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse moneys in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for such services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of such accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision thereof."

Section 4. Section 32-3-403, MCA, is amended to read:

"**32-3-403. Election or appointment of officials.** (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

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(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for such terms as the bylaws provide. *However, the bylaws of the credit union may provide that the supervisory committee members are elected for such terms as the bylaws provide by the members of the credit union at the annual meeting of the members or provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417, are the responsibility of the board of directors.*

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, a credit manager."

Section 5. Section 32-3-412, MCA, is amended to read:

"32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. *However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.*

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers,

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and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members."

Section 6. Section 32-3-417, MCA, is amended to read:

"32-3-417. Duties of supervisory committee or board. (1) The *board of directors or* supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The *board of directors or* supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years."

Section 7. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act *or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department.*

(2) No credit union may begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act *or under an approved insurance plan* has been furnished to the director of the department of commerce.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of commerce shall make available reports of condition and examination reports to the administrator of the national credit union administration *or any official of an insurance plan* and may accept any report of examination made on behalf of such administrators *or officials.* The director may appoint the administrator of the

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national credit union administration *or any official of an insurance plan* as liquidating agent of an insured credit union."

Section 8. **Withdrawals.** Shares may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

Section 9. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 10. **Codification instruction.** Section 8 is intended to be codified as an integral part of Title 32, chapter 3, and the provisions of Title 32, chapter 3, apply to section 8.

Approved April 17, 1985.

CHAPTER NO. 523

[SB 322]

AN ACT ALLOWING INTEREST ON A TORT TO ACCRUE BEGINNING FROM THE DATE 30 DAYS AFTER THE CLAIMANT PRESENTED A WRITTEN STATEMENT TO THE OPPOSING PARTY STATING THE CLAIM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interest on torts.** (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or his agent stating the claim and how the specific sum was calculated.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until such damages are incurred and damages for:

(a) pain and suffering;

(b) injury to credit, reputation, or financial standing;

(c) mental anguish or suffering;

(d) exemplary or punitive damages;

(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

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(4) Any payment by a party of any claim or interest thereon as set forth in subsection (1) shall not be an admission of liability and shall not be made known to the jury.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 2, and the provisions of Title 27, chapter 1, part 2, apply to section 1.

Approved April 18, 1985.

CHAPTER NO. 524

[SB 412]

AN ACT TO REQUIRE 30 DAYS TO BE SERVED UNDER A SENTENCE FOR COMMITTING CERTAIN CRIMINAL OFFENSES AMOUNTING TO CHILD ABUSE; AMENDING SECTION 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution, as provided in subsection (2);

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If restitution is imposed as a condition under subsection (1)(a) or (1)(b), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Approved April 18, 1985.

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CHAPTER NO. 525

[HB 293]

AN ACT TO PROVIDE A CIVIL PENALTY FOR FAILURE TO ACKNOWLEDGE A LIEN SATISFACTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Acknowledgement of lien satisfaction — penalty.** Whenever a lien authorized under Title 71, chapter 3, is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, it is the duty of the creditors to acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, he is liable to any person injured by such failure for a civil penalty of $100, plus any other damages provided by law.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 71, chapter 3, part 1, and the provisions of Title 71, chapter 3, part 1, apply to section 1.

Approved April 18, 1985.

CHAPTER NO. 526

[HB 310]

AN ACT ALLOWING ABUSED FAMILY OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS; AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND 40-4-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

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(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse under the provisions of 40-4-106."

Section 2. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) *the applicant or* the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required."

Section 3. Section 27-19-316, MCA, is amended to read:

"27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) *except as provided in 40-4-106,* expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes."

Section 4. Section 40-4-106, MCA, is amended to read:

"40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

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(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, *harm, or bodily injury* against the petitioner by a *family or household member;* and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. *Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.*

(4) The court may issue a temporary restraining order *for a period not to exceed 20 days* without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

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(c) terminates *upon order of the court or* when *a* final decree is entered or when *a* petition for dissolution or legal separation is voluntarily dismissed; *and*

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under [section 9]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

Section 5. **Forms — distribution — filing.** The attorney general shall prepare uniform sample instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-106 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice and municipal courts. The clerk of the district court, justices of the peace, and municipal courts shall make forms available to the public at no charge.

Section 6. **Jurisdiction and venue.** (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-106(3).

(2) The municipal judge or justice of the peace shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-106(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

Section 7. **Review or removal — district court.** (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal.

Section 8. **Registration of orders.** (1) The clerk of court, justice of the peace, or municipal court judge shall, within 24 hours of receiving proof of service of an order under 40-4-106, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the

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proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

Section 9. **Misdemeanor.** (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-106.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 10. **Codification instruction.** (1) Sections 5 through 8 are intended to be codified as an integral part of Title 40, chapter 4.

(2) Section 9 is intended to be codified as an integral part of Title 45.

Approved April 18, 1985.

CHAPTER NO. 527

[HB 389]

AN ACT PERMITTING A RETIRED MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO IS RECEIVING AN OPTIONAL RETIREMENT ALLOWANCE TO DESIGNATE A DIFFERENT CONTINGENT ANNUITANT, SELECT A DIFFERENT OPTION, OR CONVERT HIS OPTIONAL RETIREMENT ALLOWANCE TO A REGULAR RETIREMENT ALLOWANCE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-3-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1101, MCA, is amended to read:

"19-3-1101. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this chapter, into an optional retirement allowance which is the actuarial equivalent of the regular retirement allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) option 4—such other actuarially equivalent benefit as may be approved by the board.

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(2) Election of an optional retirement allowance must be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant dies before the member has received the first payment under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written request to the board, a retired member who is receiving an optional retirement allowance may designate a different contingent annuitant, select a different option, or convert his optional retirement allowance to a regular retirement allowance if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement allowance to reflect the change."

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

CHAPTER NO. 528

[HB 423]

AN ACT PROVIDING THAT AIRCRAFT LANDINGS AND TAKEOFFS FROM PUBLIC WATERS AND ROADS ARE LAWFUL; AMENDING SECTION 67-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-1-204, MCA, is amended to read:

"67-1-204. Lawfulness of flight and landings. (1) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless so conducted as to be imminently dangerous to persons or property lawfully

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on the land or water or in violation of the air commerce regulations which have been or may be promulgated by the department of commerce of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in Title 14, part 91, Code of Federal Regulations, are taken prior to such landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of such roads, are taken prior to such landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction shall incur no liability as a result of an approval under this subsection.

(4) No person shall operate an aircraft, as pilot thereof, either in the air, *on the water,* or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused therefrom.

(6) The landing of an aircraft on the *private* lands or waters of another without his consent is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

CHAPTER NO. 529

[HB 424]

AN ACT TO PROVIDE FOR A VEHICLE PURCHASE STICKER IN A PRESCRIBED FORM AS PROOF OF PURCHASE FOR PURPOSES OF THE REGISTRATION GRACE PERIOD; AMENDING SECTION 61-3-317, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of a transferred motor vehicle

shall have a grace period of 20 calendar days from the date of purchase to make application and pay the taxes, or fees, or both provided by part 5 of this chapter, unless the tax or fee has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a *vehicle purchase sticker in a form prescribed and furnished by the division, obtained from the county treasurer or a law enforcement officer as authorized by the division,* reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law."

Section 2. **Extension of authority.** Any existing authority of the department of justice, motor vehicle division, to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 18, 1985.

CHAPTER NO. 530

[HB 462]

AN ACT TO LIMIT THE MARKETING OF FURNITURE MADE IN THE MONTANA STATE PRISON; AMENDING SECTION 53-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. *(1) Except as provided in subsection (3), the* department may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

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(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials;

(v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

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(4) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 18, 1985.

CHAPTER NO. 531

[HB 489]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO RESIDENTIAL YOUTH CARE FACILITIES; TO REQUIRE PRIOR CONSULTATION WITH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR PLACEMENT OF YOUTHS IN RESIDENTIAL YOUTH FACILITIES; AND AMENDING SECTIONS 41-3-1102 THROUGH 41-3-1104, 41-3-1122, 41-5-403, AND 41-5-523, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1102, MCA, is amended to read:

"41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of social and rehabilitation services.

(3) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(4) *"Person" means* any individual, partnership, voluntary association, or corporation.

(5) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(6) "Youth care facility" means a facility, licensed in accordance with 41-3-1141 through 41-3-1143, in which substitute care is provided to youth and includes youth foster homes, youth group homes, and child-care agencies.

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(7) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth *other than the foster parents' own children, stepchildren, or wards.*

(8) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 2. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

(f) apportion and allocate placement budgets to all judicial districts;

(g) seek public input on the plan prior to its adoption and implementation; and

(h) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

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(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in *youth* foster care homes *and youth group homes other than aftercare homes* for youths committed to the department of institutions who need to be placed in such facilities. Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services."

Section 3. Section 41-3-1104, MCA, is amended to read:

"41-3-1104. Aftercare facilities. The department of institutions may establish, maintain, and administer youth correction facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department of institutions."

Section 4. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth *who is a youth* in need of care, a youth in need of supervision, or a delinquent youth *is placed by the youth court or the department* in a youth care facility, the department shall pay, *within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department* for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed under the supervision of the department or placed by the department or the department pays for the care of the youth as set forth in this section."

Section 5. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 or into a home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;

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(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment.

(5) If custody is given to the department of institutions under subsection (1)(d), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed."

Section 6. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

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(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths, except that if the evaluation is to be done at the Montana youth treatment center, the commitment provisions of 53-21-505 must be followed and no evaluation of a youth may be done at Montana state hospital.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining

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to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(7) Except as provided in 53-21-507, if the custody of a youth is transferred to the department of institutions under subsection (1), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed.

(8) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 7. **Extension of authority.** Any existing authority of the department of social and rehabilitation services or the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 18, 1985.

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CHAPTER NO. 532

[HB 517]

AN ACT TO PERMIT THE CLERK OF THE DISTRICT COURT TO CHARGE A $2 HANDLING FEE FOR EACH CHILD SUPPORT PAYMENT PROCESSED; AMENDING SECTIONS 40-4-206 AND 40-5-125, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-206, MCA, is amended to read:

"40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. *The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such fund.*

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order."

Section 2. Section 40-5-125, MCA, is amended to read:

"40-5-125. Order of support. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding state. *The clerk may charge a handling fee in accordance with 40-4-206.* The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order."

Section 3. **Applicability.** This act shall apply to all court decrees and court orders after the effective date of this act.

Approved April 18, 1985.

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CHAPTER NO. 533

[HB 541]

AN ACT PROVIDING THAT A PARTY WHO UNREASONABLY AND VEXATIOUSLY MULTIPLIES LEGAL PROCEEDINGS IS RESPONSIBLE FOR PAYMENT OF INCREASED COURT COSTS, ATTORNEY FEES, AND OTHER EXPENSES AND LOSSES RESULTING FROM SUCH CONDUCT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Litigant's liability for excess costs.** An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

Approved April 18, 1985.

CHAPTER NO. 534

[HB 602]

AN ACT DEFINING THE RELATIONSHIP BETWEEN AN ARTIST AND AN ART DEALER; PROVIDING THAT A CONSIGNMENT RELATIONSHIP IS CREATED; PROVIDING THAT THE DEALER IS A TRUSTEE AND HOLDS THE ARTIST'S WORKS AND FUNDS IN TRUST; PROVIDING FOR NOTICE OF SALES TO THE ARTIST.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, signed limited edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, photographs, original works in ceramics, wood, metals, glass, plastic, wax,

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stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

(5) "Person" means an individual, partnership, corporation, association, or other group, however organized.

Section 2. **Artist-art dealer relationship.** Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition and sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

Section 3. **Agency relationship — trust property.** A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

Section 4. **Subsequent sale — payment to consignor.** A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

Section 5. **Waiver void — exemption from UCC.** (1) Any provision of a contract or agreement by which the consignor waives any provision of [this act] is void.

(2) [This act] is not subject to the provisions of Title 30, chapters 1 through 9.

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Section 6. **Saving clause.** This act does not apply to a written contract executed prior to October 1, 1985, unless:

(1) the parties agree that this act will apply; or

(2) the contract is extended or renewed after the effective date of this act.

Approved April 18, 1985.

CHAPTER NO. 535

[HB 743]

AN ACT TO CLARIFY THE SUBROGATION RIGHTS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES REGARDING THE PROVISION OF MEDICAL BENEFITS ON BEHALF OF A PERSON FOR WHOM A THIRD PARTY IS LIABLE; AMENDING SECTIONS 53-2-612 AND 53-3-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Subrogation and third party liability for certain benefits. (1) The department is subrogated to the right of each recipient *or beneficiary* of medical benefits to recover damages or compensation from a third party to the extent necessary to reimburse the department for medical benefits paid to or on behalf of the *recipient or beneficiary.* Upon determination that a third party is liable for the medical expenses of a *recipient or beneficiary* under this section, the department shall immediately notify the third party of the subrogation.

(2) The department may, in the name of the *recipient or beneficiary* to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the *recipient or beneficiary.* This section does not affect the right *of the recipient or beneficiary* to initiate and prosecute to final conclusion an action for damages or compensation in his own name *in accordance with the provisions of this section.*

(3) From the amount collected from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be deducted first. Unless the department and the recipient or beneficiary agree to a different settlement, the amount previously paid as medical benefits by the department, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department. The remainder must be paid to the recipient or beneficiary. However, any recipient or beneficiary who initiates an action to recover damages or compensation shall receive no less than one-third of the total amount recovered after the deduction of reasonable attorney fees and costs.

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(4) A recipient *or beneficiary* of medical benefits or his legal representative shall notify the department *by means of a certified letter if the recipient or beneficiary or his legal representative asserts a claim against a third party or his insurer for damages or compensation for an injury for which the department paid medical benefits in whole or in part. The notice must be mailed to the director of the department and must contain the following information:*

(a) the name and address of the recipient or beneficiary;

(b) the name of the third party alleged to be liable to the recipient or beneficiary;

(c) the name and address of any known insurer of the third party; and

(d) the judicial district and docket number of any action filed.

(5) (a) No recipient or beneficiary who has received medical assistance from the department as a result of an injury which creates a claim or cause of action may release the liable third party or his insurer from liability to the department. If any liable third party or his insurer, after receiving notice of the department's subrogation claim, makes payment on account of injury or death and the department has not been reimbursed for the medical benefits paid on behalf of the recipient or beneficiary, the insurer or third party is liable to the department for the amount of medical benefits paid by the department.

(b) The notice requirements of subsection (5)(a) are satisfied if:

(i) the insurer receives from the department, by certified mail, a statement of the claims paid or medical services rendered by the department, together with a claim for reimbursement; or

(ii) the insurer receives a claim from a recipient or beneficiary stating that the recipient or beneficiary has applied for or has received medical assistance from the department in connection with the same claim.

(6) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a *recipient or beneficiary of medical benefits from the state or county* and includes but is not limited to insurers, health service organizations, and those liable in tort."

Section 2. Section 53-3-103, MCA, is amended to read:

"53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial responsibility of the county commissioners and are payable from the county poor fund. The county commissioners shall make provisions for competent and skilled medical or surgical services. "Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by

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the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance—medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance or for persons who are eligible for medicaid in accordance with Title 53, chapter 6, part 1, or for persons who have the right or are entitled to medical aid and hospitalization from the federal government or any agency thereof.

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 apply to medical benefits provided for in this section."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1985.

CHAPTER NO. 536

[HB 837]

AN ACT PROVIDING FOR THE OFFENSE OF HARMING A POLICE DOG AND PRESCRIBING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-201.

(2) "Police dog" means a dog that is:

(a) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(b) specifically trained for law enforcement work; and

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(c) under the control of a law enforcement officer.

Section 2. **Harming a police dog — penalty.** (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots or kills a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 45 and the provisions of Title 45 apply to sections 1 and 2.

Approved April 18, 1985.

CHAPTER NO. 537

[HB 871]

AN ACT ESTABLISHING THE MONTANA MEDAL OF VALOR TO BE AWARDED BY THE GOVERNOR FOR ACTS OF EXTRAORDINARY COURAGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Montana medal of valor established.** (1) The governor is authorized to present, in the name of the people of Montana, a medal to be known as the Montana medal of valor, bearing a suitable inscription and ribbon, to any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.

(2) The governor shall award the Montana medal of valor to anyone whose behavior, in his judgment, merits such recognition. The award must be made in a public ceremony at the recipient's city or town of residence or at a city or town designated by the recipient, except under the circumstances indicated in subsection (3).

(3) If the recipient of the medal of valor dies before the medal is awarded, the governor shall present the medal to the recipient's spouse, eldest surviving child, eldest surviving sibling, or either parent or to a person designated by one of these. If the medal is presented to a person who is not a resident of Montana, the award ceremony must be held at the state capitol in Helena.

Approved April 18, 1985.

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CHAPTER NO. 538

[SB 89]

AN ACT REVISING THE LAWS RELATING TO GARNISHMENT OF PERSONAL SERVICES EARNINGS; AMENDING SECTION 25-13-614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) Except as provided in *subsection (2)*, the earnings of the judgment debtor for his personal services rendered *during the 45-day period prior to* the levy of execution or attachment *are exempt to the extent* such earnings are necessary for the *support* of his family.

(2) *(a) No earnings are exempt unless the judgment debtor complies with [section 2].*

(b) Earnings are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673.

(c) One-half of earnings are not exempt for debts incurred by *the judgment debtor* or his family for gasoline and the common necessaries of life.

(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

Section 2. **Execution against earnings of judgment debtor — affidavit of exemption — hearing.** (1) A judgment debtor may exempt earnings for his personal services, as provided in 25-13-614, by filing an affidavit with the court that issued the writ of execution or attachment declaring that such earnings are necessary for the support of his family.

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The affidavit must include the address of the judgment debtor or his attorney for purposes of service of notice under subsection (2). Levy of execution of judgment is automatically stayed by the filing of an affidavit.

(2) When an affidavit of exemption is filed, the court shall immediately mail a copy of the affidavit to the judgment creditor and, upon motion of the judgment creditor, set the matter for hearing within 14 days to determine eligibility for and the amount of exemption, if any, under 25-13-614. The court shall mail a notice of hearing to the parties.

(3) Following the hearing on the affidavit, the court shall remove the stay, order the stay extended, or remove the stay to the extent of nonexempt property.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 25, chapter 13, part 4, and the provisions of Title 25, chapter 13, part 4, apply to section 2.

Section 4. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

CHAPTER NO. 539

[SB 331]

AN ACT TO PERMIT PRIVATE ENFORCEMENT OF ORDERS OF THE HUMAN RIGHTS COMMISSION AND TO CLARIFY THE AUTHORITY OF THE DISTRICT COURT WHEN ENFORCING AN ORDER OF THE HUMAN RIGHTS COMMISSION; AMENDING SECTIONS 49-2-508 AND 49-3-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-508, MCA, is amended to read:

"**49-2-508. Enforcement of commission order.** If the commission's order is not obeyed, the commission staff *or a party may* petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by *any appropriate order.*"

Section 2. Section 49-3-311, MCA, is amended to read:

"**49-3-311. Enforcement of commission order.** If the commission's order is not obeyed, the commission staff *or a party may* petition the district court in the county where the discriminatory practice occurred or in

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which the respondent resides or transacts business to enforce the commission's order by *any appropriate order.*"

Section 3. **Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies to cases pending with the commission for human rights or the district court on its effective date and to cases filed with the commission for human rights on or after its effective date.

Approved April 18, 1985.

CHAPTER NO. 540

[SB 371]

AN ACT PROHIBITING CERTAIN PURCHASES AND SALES OF GRIZZLY BEAR PARTS; PROVIDING FOR DISPOSITION OF SEIZED GRIZZLY BEAR PARTS; REMOVING GRIZZLY BEAR FROM THE DEFINITION OF GAME FARM ANIMALS; PROVIDING FOR REGISTRATION OF CERTAIN GRIZZLY BEAR PARTS; AMENDING SECTIONS 87-1-511, 87-3-111, 87-4-406, AND 87-4-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-511, MCA, is amended to read:

"**87-1-511. Sale of confiscated birds and animals — disposition of seized grizzly bears.** *(1)* All birds, animals, fish, heads, hides, teeth, or other parts of any animal *other than grizzly bear* seized by any officer or warden shall be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts."

Section 2. Section 87-3-111, MCA, is amended to read:

"87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section shall not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof; or

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, *or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in [section 5].*

(3) Except as provided in subsection (4), any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both."

Section 3. Section 87-4-406, MCA, is amended to read:

"87-4-406. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

(3) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game animals or parts of game animals, as authorized under this part.

(4) "Game farm animal" means a privately owned caribou, *black* bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.

(5) "Game farm shooting license" means the license required under 87-4-421 for a game farm operator to hunt the game farm animals indigenous to the state of Montana on his game farm.

(6) "Person" means an individual, firm, corporation, association, or partnership."

Section 4. Section 87-4-702, MCA, is amended to read:

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"87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. *(1) Except as provided in subsection (2), it* is lawful for any merchant, hotelkeeper, or restaurant keeper to have in his possession, offer for sale, or sell *game birds and* game, provided the game or game birds are not killed in Montana.

(2) No merchant, hotelkeeper, or restaurant keeper may offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear."

Section 5. **Registration for sale of certain grizzly bears.** (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount thereof may sell it if it has been registered with the department in the manner and upon forms provided by the department. The registration form must specifically describe the grizzly bear or the hide, head, or mount thereof and must accompany it upon any sale.

(2) Bears or parts thereof may be registered as follows:

(a) Before January 1, 1986, any lawfully killed grizzly bear or part thereof may be registered.

(b) On or after January 1, 1986, bears lawfully killed in Montana may be registered within 10 days after the date of kill, and bears lawfully killed outside Montana may be registered within 3 months after the date of kill upon presentation of proof of lawful kill.

(3) Registration under this section does not legalize any prior illegal act, such as the unlawful killing or theft of a grizzly bear or part thereof.

Section 6. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 87, chapter 3.

Approved April 18, 1985.

CHAPTER NO. 541

[SB 375]

AN ACT PROVIDING FOR NOTICE AND A HEARING PRIOR TO REVOCATION OF A MENTAL HEALTH PATIENT'S CONDITIONAL RELEASE STATUS; AMENDING SECTION 53-21-183, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-183, MCA, is amended to read:

"53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental

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health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, *except as provided in [section 5]*, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

(4) This section and [sections 2 through 5] do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days."

Section 2. **Rehospitalization of patient conditionally released from inpatient treatment facilities — petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of his present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be seriously mentally ill within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

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(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge must ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to his friend of respondent, if any, and to his counsel.

Section 3. **Detention of conditionally released patient pending hearing.** The court may not order detention of the conditionally released patient pending the hearing, except as permitted under 53-21-124.

Section 4. **Hearing on rehospitalization petition — revocation of conditional release.** (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which he was conditionally released or sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be seriously mentally ill and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

(4) Except as provided in [section 5], an order revoking the patient's conditional release status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128.

Section 5. **Extension of conditions of release — hearing.** (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128,

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but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(b) the deterioration will predictably result in the necessity of further inpatient care for the person. Predictability may be established by the patient's medical history.

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the patient's counsel. If any person so notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization petition pursuant to [section 4] except that in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient as required by 53-21-162. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section except that the patient's custody may not be

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affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1).

Section 6. **Codification instruction.** Sections 2 through 5 are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to sections 2 through 5.

Approved April 18, 1985.

CHAPTER NO. 542

[SB 438]

AN ACT REVISING THE QUALIFICATION REQUIREMENTS OF APPLICANTS FOR LOANS FROM THE MONTANA AGRICULTURAL LOAN AUTHORITY; REDUCING THE BONDING AUTHORITY FOR BEGINNING FARMER LOANS; CLARIFYING APPROVAL PROCESS FOR TAX DEDUCTION TO SELLER OF AGRICULTURAL LAND; AMENDING SECTIONS 80-12-203, 80-12-204, 80-12-211, AND 80-12-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant must:

(a) declare his intention to maintain his residence in Montana during the length of the loan;

(b) have been approved by a financial institution; *and*

(c) have a net worth not to exceed $250,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-102, may not apply."

Section 2. Section 80-12-204, MCA, is amended to read:

"80-12-204. Evaluation of applicants. (1) The authority shall by rule establish:

(a) procedures and standards for evaluating applications for loans to be approved by the authority for issuance of bonds; and

(b) a system for evaluating the applicants, considering the following criteria:

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(i) the applicant's net worth;

(ii) the applicant's access to livestock and machinery;

(iii) the applicant's training and experience in agriculture;

(iv) the applicant's prospects for succeeding in an agricultural operation on the land proposed for purchase; and

(v) any other factors it may prescribe.

(2) The authority shall select the best qualified and most deserving applicants from among those applying for approval of loans for issuance of bonds.

(3) The authority may seek the advice of such lenders as the farmers home administration, the production credit association, the federal land bank, private lenders, or similar organizations in Montana and coordinate its program through these organizations."

Section 3. Section 80-12-301, MCA, is amended to read:

"80-12-301. Issuance of bonds — credit of the state not pledged. (1) The authority may issue bonds of the state of Montana in a principal amount it determines necessary to provide sufficient funds for achieving any of the purposes of the Montana agricultural loan authority program, including the payment of interest on bonds, establishment of reserves to secure the bonds, and all other expenditures of the authority incident to the program.

(2) Each issue of its bonds is an obligation of the authority, payable out of any revenues, assets, or money generated by the Montana agricultural loan authority program. The authority shall manage its loans so that the bonds are repaid by the revenue generated by the program. The full faith and credit and taxing powers of the state are not pledged for the payment of bonds issued by the authority under the provisions of this chapter.

(3) The bonds must be authorized by resolution of the authority, bear a date, and mature at times the authority determines. A bond may not mature more than 60 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The bonds of the authority may be sold at public or private sale, at prices determined by the authority.

(4) The resolution shall specify:

(a) the rate of interest of the bonds;

(b) the denomination of the bonds;

(c) whether the bonds shall be in coupon or registered form and registration privileges, if any;

(d) the manner and place of execution;

(e) the manner, place, and medium of payment; and

(f) the terms of redemption.

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(5) The total amount of bonds outstanding at any one time may not exceed *$40* million."

Section 4. Section 80-12-211, MCA, is amended to read:

"80-12-211. Income tax deduction for land sale to beginning farmers. A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in his taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, provided the transaction is approved by the authority for this purpose."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

CHAPTER NO. 543

[HB 439]

AN ACT PERMITTING CONSUMER REPORTING AGENCIES TO OBTAIN PERSONAL CHILD SUPPORT INFORMATION FROM CHILD SUPPORT AGENCIES; PROVIDING THAT THE CONSUMER REPORTING AGENCY NOTIFY ANY PERSON ABOUT WHOM CHILD SUPPORT DEBT INFORMATION HAS BEEN REQUESTED; REQUIRING THE DEPARTMENT TO ADOPT RULES PROVIDING AN OPPORTUNITY TO CONTEST THE DEBT AMOUNT OF RECORD; AMENDING SECTIONS 31-3-152, 40-5-206, AND 53-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Consumer credit reports — use of child support obligation information.** (1) For the purposes of this section, "child support agency" means the department of revenue or a public agency with whom the department has contracted to carry out any of the department's child support enforcement authority set forth in Title 40, chapter 5.

(2) A consumer reporting agency may request and receive from any child support agency personal or confidential information concerning an individual's overdue child support debt. However, if the debt is less than $1,000, the information regarding the amount may be made available only at the option of the child support agency. The child support agency shall charge the consumer reporting agency a fee, commensurate with the cost of providing the information.

(3) Prior to requesting the information, the consumer reporting agency must serve the individual with notice, either in person or by certified mail. The notice must state:

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(a) the nature and substance of the information to be requested from the child support enforcement agency;

(b) the name and address of the child support agency;

(c) that the individual may inspect the child support debt records in person or obtain a copy by mail from the child support agency; and

(d) that if, within 30 days of service, the individual does not respond to the notice or otherwise initiate steps to contest the accuracy of the information under procedures established by the child support agency, the requested information will be forwarded to the consumer reporting agency for inclusion in the individual's investigative consumer report.

(4) Upon receipt of the request for information, together with proof of service of the notice in compliance with subsection (3), the child support agency must provide the appropriate information under this section to the consumer reporting agency. However, any debt amount that is in dispute may not be provided until the dispute has been determined by agreement or court or administrative decision. If the individual does not agree with the administrative decision, he is entitled to have a statement of dispute, as provided in 31-3-124, included in the information provided to the consumer reporting agency.

(5) The department of revenue shall adopt rules to implement this section, including rules establishing a procedure for contesting the accuracy of the information contained in the child support records of the child support agency and rules establishing a schedule of fees charged pursuant to subsection (2) of this section. The department shall adopt guidelines which take into account the payment record of the individual, the availability of other remedies, and other considerations which it determines relevant for determining whether use of the procedures provided in [this act] would carry out the purpose of enforcing payment of child support or would be appropriate in the circumstances. If after application of the guidelines to the request for information the department determines the procedures provided in [this act] are not appropriate, it may deny the request.

Section 2. Section 31-3-152, MCA, is amended to read:

"31-3-152. Rules. The department of commerce shall enforce this part, *except [section 1]*, and promulgate rules necessary to carry out the intent of this part, *except [section 1]*."

Section 3. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned

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or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) *Except as provided in [section 1], any* records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 4. Section 53-2-504, MCA, is amended to read:

"53-2-504. Unauthorized disclosure of information obtained in department of revenue investigations a criminal act. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation shall be disclosed except in accordance with the laws applicable to the source of information, provided, however, such information may be used or disclosed *under [section 1] or* as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information."

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 31, chapter 3, part 1.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

CHAPTER NO. 544

[HB 441]

AN ACT TO PERMIT DOCKETING AND ENFORCEMENT OF ADMINISTRATIVE CHILD SUPPORT ORDERS IN THE DISTRICT COURT AND TO LIMIT THE MODIFICATION OF THE SUPPORT ORDERS BY THE DISTRICT COURT; TO ALLOW THE DEPARTMENT TO ISSUE A WARRANT FOR DISTRAINT BASED UPON THE DOCKETED ADMINISTRATIVE CHILD SUPPORT ORDER; TO DELETE THE REQUIREMENT FOR A SECOND NOTICE AND HEARING PRIOR TO EXECUTION ON A FILED WARRANT FOR DISTRAINT; AMENDING SECTION 40-5-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Filing and docketing of final orders — orders effective as district court decrees.** (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. If the administrative order has been entered by nonappearance or default on the part of the responsible parent,

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the court may reconsider the order on its merits. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after any motion for modification. The standard for any such modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-241.

Section 2. Section 40-5-241, MCA, is amended to read:

"40-5-241. Warrant for distraint. Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt. The warrant is subject to the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 5, part 2.

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 18, 1985.

CHAPTER NO. 545

[HB 483]

AN ACT PROVIDING A PROCEDURE FOR DISSOLVING COUNTY WATER AND SEWER DISTRICTS; PROVIDING FOR A PETITION TO DISSOLVE THE DISTRICT; PROVIDING FOR A PUBLIC HEARING ON THE QUESTION; AND REQUIRING A DETERMINATION THAT THERE ARE NO OUTSTANDING DEBTS OF THE DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Dissolution of district.** (1) Upon receipt of a petition to dissolve the district, signed by more than 50% of the freeholders of the district, the board of directors shall set a date for a public hearing on dissolution of the district. The hearing date may be not earlier than 45 days or

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later than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on the dissolution must be published once a week for 3 consecutive weeks in a newspaper of general circulation in each county in which the district is located. The published notice must include notice to creditors of the district to present claims owed by the district to the board of directors prior to the date set for the dissolution hearing.

(2) At the dissolution hearing the board of directors shall hear testimony of all persons interested in whether the district should be dissolved and shall determine whether there are any outstanding debts of the district.

(3) After the hearing, if the board determines that dissolution of the district is in the best interest of the public and that there are no outstanding debts of the district, it may resolve to recommend that the district be dissolved. A copy of the resolution must be sent to the county commissioners of the county or counties in which the district is located.

(4) The district is dissolved after the approval of the dissolution by all the boards of county commissioners of the counties in which the district is located. An instrument approving dissolution must be filed with the clerk and recorder of the county or counties in which the district is located, who shall then cause a copy of the instrument to be filed with the secretary of state.

(5) Any assets of the district after dissolution shall be distributed pro rata by taxable valuation to the general funds of the counties in which the district was located.

Section 2. **Coordination instruction.** If Senate Bill No. 130, including the section of that bill that provides for newspaper publication of notices, is passed and approved, the sentence beginning on line 18 on page 1 of this act is amended to read: "A notice of the public hearing on the dissolution must be published as provided in [section 1 of Senate Bill No. 130]."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 13, parts 22 and 23, and the provisions of Title 7, chapter 13, parts 22 and 23, apply to section 1.

Approved April 18, 1985.

CHAPTER NO. 546

[HB 577]

AN ACT ALLOWING TRANSITION TO COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10 and 13] may be cited as the "Montana Telecommunications Act".

Section 2. **Purpose.** The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent

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with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of [sections 1 through 10 and 13] to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment.

Section 3. **Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Private telecommunications service" means a system, including the construction, maintenance, or operation thereof, for the provision of telecommunications service or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.

Section 4. **Exemption for private telecommunications service.** Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under [sections 1 through 10 and 13]. An occasional or accomodative use of a private telecommunication system by a third person is not a violation of this section.

Section 5. **Manner of regulation of telecommunications service.** (1) Before any person or entity provides regulated telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name and address of the provider;

(b) a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

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(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter.

(2) The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.

Section 6. **Prohibition against cross-subsidization.** (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services which are not regulated or are not tariffed. Expenses incurred in conjunction with services not regulated or not tariffed under this chapter may not be attributed to services which are subject to regulation for any reason.

(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.

Section 7. **Regulation of rates and charges.** (1) As to that telecommunications service which is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of such service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(e) provide such other rate or service regulation as will promote the purposes of [sections 2 through 10 and 13].

(3) In determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

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(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) such other factors as the commission may prescribe through rulemaking which are appropriate to fulfill the purposes of [the act].

(4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services.

(5) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.

Section 8. **Forbearance of rate regulation to facilitate competition.** (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application shall describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with such other information and in such form as the commission may prescribe. Such additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing such service.

(3) The commission shall approve or deny any such application for forbearance of regulation to facilitate competition within 10 days after the filing of the application, except that the commission may by order defer action for an additional 5-day period. If the commission has not acted on any application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with such person or entity for the provision of such service without regard to its tariffs on file and approved by the commission.

(6) Within 10 days after the conclusion of such negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided,

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together with the charges and other conditions of the service. Thereafter, the provider of regulated telecommunications service may provide such service to the customer without regard to its tariffs on file and approved by the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission.

Section 9. **Examination of books and records.** Nothing in [sections 1 through 10 and 13] precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

Section 10. **Rulemaking authority.** The commission may adopt rules to implement [sections 1 through 10 and 13].

Section 11. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) *regulated telecommunications* service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public; or

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23."

Section 12. Section 69-3-201, MCA, is amended to read:

"69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat,

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light, power, water, or *regulated telecommunications* service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful."

Section 13. **Exception.** Nothing in [this act] affects the exemption from regulation provided by 35-18-104.

Section 14. Section 69-3-321, MCA, is amended to read:

"69-3-321. Complaints against public utility — hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, *or regulated telecommunications service,* or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties."

Section 15. **No preemption of laws governing anticompetitive activity.** Nothing in [sections 1 through 10 and 13] in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

Section 16. **Codification instruction.** Sections 1 through 10 and 13 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to sections 1 through 10 and 13.

Section 17. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

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CHAPTER NO. 547

[HB 639]

AN ACT REVISING POLYGRAPH LICENSURE LAWS BY CREATING INTERNSHIP TRAINING; ESTABLISHING A PRE-TEST PROCEDURE; SETTING DATES FOR LICENSE RENEWAL; AMENDING SECTIONS 37-62-101 AND 37-62-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-62-101, MCA, is amended to read:

"37-62-101. Definitions. In this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Examinee" means an individual who is being examined, tested, or questioned by an examiner for the purpose of detecting deception or verifying truthfulness.

(3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

(4) "Internship" means the study of polygraphs and the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph examiner."

Section 2. Section 37-62-204, MCA, is amended to read:

"37-62-204. Terms of license — renewal. (1) An examiner's license expires at midnight on *March 1 of each year and is renewable only after payment of a renewal fee and proof of compliance with continuing education requirements as provided by 37-62-207.*

(2) An examiner whose license has expired may at any time within 2 years after the expiration date obtain a renewal license without examination upon payment of a renewal fee to the department. An examiner whose license expired while he was on active duty in the armed forces of the United States or the national guard may, notwithstanding the provisions of

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10-1-605, renew his license without examination within 2 years after discharge from service."

Section 3. **Internship license.** (1) Upon application, payment of fees, and approval by the department, a polygraph intern license must be issued to an applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a licensed polygraph examiner who shall, in accordance with rules established by the department, file reports concerning intern training.

Section 4. **Pre-test procedure — termination of examination.** (1) An examiner may not administer a polygraph examination without first conducting a pre-test interview with the person to be examined. The examinee must be informed of all issues about which he will be examined and which will be reported by the examiner. All questions to be asked during the examination must be written and read verbatim to the examinee during the pre-test interview.

(2) Written, signed, and dated consent must be given by the examinee prior to any polygraph examination.

(3) Upon the request of the examinee, all pre-test procedures or polygraph examinations in progress must terminate immediately. The examiner may, in his discretion, terminate any examination for any reason.

Section 5. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** Sections 3 and 4 are intended to be codified as an integral part of Title 37, chapter 62, and the provisions of Title 37, chapter 62, apply to sections 3 and 4.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

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CHAPTER NO. 548

[HB 649]

AN ACT REVISING FOR ADMINISTRATIVE PURPOSES THE LAWS RELATING TO REGULATION OF THE PRACTICE OF DENTURITRY; REQUIRING THE BOARD OF DENTURITRY TO MEET AT LEAST TWICE A YEAR AND ADD A DENTIST TO THE BOARD; ABOLISHING THE FAIR PRACTICE COMMITTEE; PROVIDING THAT FUNDS COLLECTED BY THE BOARD MUST BE DEPOSITED TO THE STATE SPECIAL REVENUE FUND; ABOLISHING PROVISIONS FOR PAYMENT OF CLAIMS THAT ARE INCONSISTENT WITH OTHER STATE STATUTES; GIVING THE BOARD OF DENTURITRY GENERAL AND SPECIFIC RULEMAKING AUTHORITY; CLARIFYING THE BOARD'S RIGHT TO ENTER INTO RECIPROCAL RELATIONS WITH OTHER STATES AND TERRITORIES; GIVING THE BOARD ADDITIONAL AUTHORITY TO SET AND MODIFY FEES; GIVING THE BOARD AUTHORITY TO ALTER FUTURE RENEWAL DATES FOR LICENSES; GIVING THE BOARD AUTHORITY TO DEFINE BY RULE UNPROFESSIONAL CONDUCT FOR THE PURPOSE OF ESTABLISHING DISCIPLINARY CONDUCT STANDARDS; PROVIDING FOR REVIEW OF CONTESTED CASE DECISIONS OF THE BOARD IN CONFORMITY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING THE BOARD WITH AUTHORITY TO SUE TO ENJOIN THE UNLICENSED PRACTICE OF DENTURITRY; PROVIDING FOR SUNSET REVIEW; PROVIDING PROCEDURES FOR MAKING AND FITTING PARTIAL DENTURES AND FOR MAKING X-RAYS; MAKING THE PROVISIONS OF TITLE 37, CHAPTER 1, AND TITLE 2, CHAPTERS 4 AND 15, APPLICABLE TO THE POWERS AND DUTIES OF THE BOARD; MAKING REPORTING REQUIREMENTS OF ELDERLY ABUSE APPLICABLE TO DENTURISTS; PROVIDING FOR ADVERTISING RESTRICTIONS; AMENDING SECTIONS 7 THROUGH 11, 13 THROUGH 15, 22, 26, AND 27 OF INITIATIVE 97 AND SECTION 53-5-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7 of Montana Initiative No. 97 is amended to read:

"Section 7. **Board — membership — vacancies.** (1) There is a Montana state board of denturitry. The board consists of five members to be appointed by the governor within *60* days of adoption of (this act). The board shall be appointed as prescribed in Section 2-15-124, except that a member need not be an attorney. *Two* members of the board must be denturists who have had, immediately prior to their appointment, at least *3* years' experience in the practice of denturitry *and who are not dentists. One member of the board must be a dentist licensed under 37-4-301.* Two members of the board must be lay persons, one member a senior citizen representative and the other member a low income representative.

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(2) Members of the board shall hold office for terms of 3 years each.

(3) Each member of the board shall hold office for his term and until his successor is duly appointed by the governor.

(4) The Board is attached to the department for administrative purposes only as provided in 2-15-121."

Section 2. Section 8 of Montana Initiative No. 97 is amended to read:

"Section 8. **Officers, meetings, voting, records.** (1) The board shall elect a president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same person. Officers of the board are elected for terms of 1 year at the annual meeting of the board. The same person may not hold the office of president for more than 3 years in succession.

(2) The board must hold meetings *at least twice a year* to conduct business and perform duties. The board may meet at such times as designated by the president or by request of two or more members of the board. Meetings must be held in the offices of the board. Dates and places may be changed through notification by the board at least 10 days prior to the regular meeting date or the date established for a meeting, whichever is earlier.

(3) A majority of the board constitutes a quorum for all purposes, and the majority vote of the members voting constitutes the action of the board.

(4) The secretary of the board must keep a complete record of all of its proceedings."

Section 3. Section 9 of Montana Initiative No. 97 is amended to read:

"Section 9. **Compensation and expenses of board members — deposit of funds.** (1) Out of the funds derived from fees collected under (this act) each member of the board must receive compensation and travel expenses as provided for in 37-1-133, with the exception that denturist members of the board may receive compensation for expenses only.

(2) Money collected by the department *under* (this act) *must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).*"

Section 4. Section 10 of Montana Initiative No. 97 is amended to read:

"Section 10. **Board powers and duties.** The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under (this act);

(2) administration of examinations for licensure under (this act);

(3) collection of fees and charges prescribed in (this act);

(4) issuance, suspension and revocation of licenses for the practice of denturitry under the conditions prescribed in (this act)*; and*

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(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of [Initiative No. 97], including but not limited to license applications, form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, inspection of denturitry premises and facilities, and investigation of complaints."

Section 5. Section 11 of Montana Initiative No. 97 is amended to read:

"Section 11. **Application for license.** Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) *(a)* Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under [Initiative No. 97].

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed 2 years of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of

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denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed attesting to 5 years practice under the certificate of license. However, no applicant may be licensed under the provisions of (this subsection) unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with (this act)."

Section 6. Section 13 of Montana Initiative No. 97 is amended to read:

"Section 13. **Applications and fees.** *(1)* The board is *initially* entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 annual license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that no denturist may hold licenses bearing more than two different addresses.

(2) The board may set other fees and modify the initial fees in accordance with the provisions of 37-1-134."

Section 7. Section 14 of Montana Initiative No. 97 is amended to read:

"Section 14. **Licensing.** (1) *After March 1, 1985, a* denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours continuing education, which may include programs sponsored by an educational institution, state denturist board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in (section 12(3) of this act.) Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under [Initiative No. 97]."

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Section 8. Section 15 of Montana Initiative 97 is amended to read:

"Section 15. **Suspension or revocation of license.** (1) The board has the power to refuse to issue a license, to suspend or revoke a license or to place a licensed person on probation for a period specified by the board, or to reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of denturitry;

(b) incompetence or gross negligence in the practice of denturitry;

(c) fraud or misrepresentation in the practice of denturitry;

(d) the use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry;

(e) the willful violation of any provision of (this act)*; or*

(f) unprofessional conduct as defined by rule of the board.

(2) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set *forth* in (section 6 of this act).

(3) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action."

Section 9. Section 22 of Montana Initiative No. 97 is amended to read:

"Section 22. **Judicial review of board action.** A person who is aggrieved by an action of the board, in denying, refusing to renew, suspending or revoking a denturist license may *petition for judicial review as provided in Title 2, chapter 4, part 7.*"

Section 10. Section 27 of Montana Initiative No. 97 is amended to read:

"Section 27. **Initial Board.** Of the initial board, the three members *who are* denturists shall serve for *staggered terms* as designated in their appointment. *Within 60 days after [the effective date of this act] the governor shall replace one of the three denturists appointed to the initial board with a dentist member.* Of the initial board, the two lay person representatives shall serve terms of 3 and 2 years respectively, as designated in their appointment. Thereafter, members must be appointed to the board for terms of 3 years each, except that appointment to fill vacancies must be for the unexpired term of such vacancy."

Section 11. **Injunction.** When it appears to the board that any person, firm, or corporation is violating any of the provisions of [Initiative No. 97], the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may

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enjoin the person, firm, or corporation from violation of [Initiative No. 97] without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

Section 12. **Applicability of chapter 1.** To the extent that they do not conflict with the provisions of [Initiative No. 97], the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

Section 13. Section 53-5-511, MCA, is amended to read:

"53-5-511. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the older person is not a resident of a long-term care facility, report the matter to:

(i) the department of social and rehabilitation services or its local affiliate;

(ii) the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred;

(b) if the older person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of social and rehabilitation services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of social and rehabilitation services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, *denturist,* chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person in the application for or receipt of public assistance payments or services;

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(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

Section 14. **Advertising restrictions.** No person may represent or hold himself out to the public as a denturist or as practicing denturitry unless licensed under [Initiative No. 97].

Section 15. **Procedure for making and fitting partial denture.** (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in [section 15 of Initiative 97].

Section 16. **Sunset review by audit committee — provisions for possible merger.** (1) The legislative audit committee shall review the operations of the board of denturitry under the criteria of 2-8-112 and 2-8-113 and the additional criterion of whether the board has licensed a sufficient number of denturists to be a viable agency. The legislative audit committee shall, if the board has not licensed 30 denturists who are practicing in Montana by October 1, 1986, or if the board has otherwise failed to demonstrate its fiscal viability, and may in any event, prepare a bill for the 50th legislature to merge the board of denturitry with the board of dentistry.

(2) If the legislative audit committee proposes a merger under subsection (1), it shall provide that the board of dentistry consist of four dentists, one dental hygienist, one denturist, and two lay persons, one of whom must be a senior citizen representative.

Section 17. Section 26 of Montana Initiative No. 97 is amended to read:

"Section 26. Section 37-14-301, MCA, is amended to read:

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"**37-14-301. Limitation of license authority — exemptions.** (1) No person may apply x-ray radiation to a person unless licensed under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, *provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations.*

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist or a permitholder under 37-14-306 may not perform any of the activities listed in this subsection.""

Section 18. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Codification instruction.** Sections 11, 12, 14, and 15 are intended to be codified as an integral part of Initiative No. 97 and Title 37, and the provisions of Initiative No. 97 and Title 37 apply to sections 11, 12, 14, and 15.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1985.

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CHAPTER NO. 549

[HB 853]

AN ACT REQUIRING THAT CERTAIN STATE CONSTRUCTION PROJECTS BE PERFORMED BY A WORK FORCE CONSISTING OF AT LEAST 50 PERCENT BONA FIDE MONTANA RESIDENTS; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Montana residents to be employed on state construction contracts.** (1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If there are two or more contracts and due to a lack of qualified personnel a contractor cannot guarantee that at least 50% of his workers will be Montana residents, his contract must provide that the percent the commissioner of labor and industry believes possible will be Montana residents and one or more of the other contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to section 1.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Applicability.** This act applies to state construction contracts for which bids are solicited after the effective date of this act.

Approved April 18, 1985.

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CHAPTER NO. 550

[SB 168]

AN ACT TO PROVIDE THAT WHENEVER THE OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS IS CONSOLIDATED WITH ANOTHER COUNTY OFFICE, THE OFFICEHOLDER MUST CONTRACT FOR CERTAIN SERVICES OF ANOTHER COUNTY SUPERINTENDENT IF THE OFFICEHOLDER DOES NOT HAVE THE QUALIFICATIONS FOR THE OFFICE OF COUNTY SUPERINTENDENT; AMENDING SECTION 20-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-201, MCA, is amended to read:

"**20-3-201. Election and qualifications.** (1) A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has not less than 3 years of successful teaching experience.

(3) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder *shall have* the qualifications of subsection (2), *or* he shall, with the approval of the governing body, contract for the services of *another county superintendent, with approval of the governing body of that county, to perform the duties required of a county superintendent in 20-3-207 and 20-3-210. The officeholder may contract for the services of another county superintendent to perform other duties required by law of a county superintendent. The superintendent of public instruction shall prescribe a contract form to be used.*"

Section 2. **Transition.** The amendment to 20-3-201 made by this act is effective in each county in which, prior to the effective date of this act, the office of county superintendent of schools had been consolidated with another office upon:

(1) the beginning of the next term of office after the effective date of this act of the county officer with which the office of the county superintendent of schools has been consolidated; or

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(2) if a contract was entered into under the provisions of 20-3-201, as it read prior to its amendment by this act, and the contract extends into the next term of the officer set forth in subsection (1), then upon the expiration of such contract.

Approved April 19, 1985.

CHAPTER NO. 551

[SB 183]

AN ACT REQUIRING THE REMAINING COMMISSIONERS TO FILL A VACANCY ON THE BOARD OF COUNTY COMMISSIONERS; PROVIDING A PROCEDURE FOR FILLING SUCH A VACANCY; AMENDING SECTION 7-4-2106, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the *remaining county commissioners* must fill the vacancy, and such appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). *The procedure to be used to fill the vacancy is as follows:*

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs, and the remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

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(3) Whenever a vacancy occurs 50 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the fourth year of the term, the person appointed by the *remaining county commissioners* under 7-4-2106(2) shall serve until the end of the term."

Section 2. **Effective date.** This act is effective January 1, 1986.

Approved April 19, 1985.

CHAPTER NO. 552

[SB 320]

AN ACT TO REQUIRE A COUNTY TREASURER TO IMMEDIATELY REMIT TO THE STATE TREASURER FOR DEPOSIT IN THE STATE EQUALIZATION AID ACCOUNT ANY SURPLUS BALANCE FROM THE BASIC COUNTY LEVIES FOR ELEMENTARY AND HIGH SCHOOL DISTRICTS; TO REQUIRE A COUNTY SUPERINTENDENT TO APPORTION THE BASIC COUNTY LEVY REVENUES TO THE DISTRICTS ON A MONTHLY BASIS; AMENDING 20-9-331, 20-9-333, AND 20-9-334, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation

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program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)*(e)* below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer *shall* remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, *immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20* of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(e) any federal or state money, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 2. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high

school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer *shall* remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, *immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20* of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 3. Section 20-9-334, MCA, is amended to read:

"20-9-334. Apportionment of county equalization moneys by county superintendent. The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a *monthly* basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the *monthly* apportionments, he shall:

(1) deduct from the revenues available in the basic county tax account the amount required for the *month* to pay the county's obligation for elementary transportation reimbursements; and

(2) deduct from the revenues available in the basic special tax for high schools account the amount required for the *month* to pay the county's obligation for high school out-of-county tuition."

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

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CHAPTER NO. 553

[SB 323]

AN ACT GENERALLY REVISING THE LAWS CONCERNING REGISTRATION AND REGULATION OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REVISING REQUIREMENTS FOR THE PRACTICE OF ENGINEERING AND LAND SURVEYING BY PARTNERSHIPS AND CORPORATIONS; AUTHORIZING EMERITUS STATUS FOR FORMER REGISTRANTS; AMENDING SECTIONS 2-15-1873, 37-67-101 THROUGH 37-67-103, 37-67-301, 37-67-303, 37-67-308 THROUGH 37-67-311, 37-67-313 THROUGH 37-67-315, 37-67-318, 37-67-319, 37-67-331, AND 37-67-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1873, MCA, is amended to read:

"2-15-1873. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and *professional* land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two *professional* and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, shall not be reappointed.

(4) *(a) Except as provided in subsection (4)(b), each* member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause *and may shorten the term of one public member so that it is not coincident with the term of the other public member.*

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 2. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and *professional* land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "*Professional land* surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique, *analysis, and application* of measuring land, *skilled and* educated in the principles of *mathematically* related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the performance of which requires the application of *special* knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

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(c) measurement and allocation of lines, angles, elevations, *and coordinate systems*;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct *charge and* control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or *professional* land surveyors may legally assume responsible charge under this chapter."

Section 3. Section 37-67-102, MCA, is amended to read:

"37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a *professional* land surveyor or through the use of some other title implies that he is a *professional* land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying."

Section 4. Section 37-67-103, MCA, is amended to read:

"37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

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(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture."

Section 5. **Practice by partnerships and corporations.** (1) The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.

(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:

(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;

(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;

(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);

(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not relieved of the responsibility for his conduct or acts performed by reason of his employment by or relationship with the partnership or corporation; and

(e) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.

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(3) A partnership or corporation desiring a certificate of authorization or the renewal thereof shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal thereof, the board shall issue to the partnership or corporation a certificate of authorization or a renewal thereof, which certificate of authorization may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for 37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization.

Section 6. Section 37-67-301, MCA, is amended to read:

"37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a *professional* land surveyor unless such person has been duly registered under the provisions of this chapter."

Section 7. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be *professional* engineers or *professional* land surveyors having personal knowledge of his engineering or land surveying experience.

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(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a *professional* land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a *professional* land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a *professional* land surveyor.

(7) The application fee for registration as both a professional engineer and *professional* land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and *professional* land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 8. Section 37-67-308, MCA, is amended to read:

"37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for *professional* land surveyor or land surveyor-in-training, an applicant must be of good character and

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reputation. The applicant shall submit five references with his application for registration as a *professional* land surveyor, three of which references shall be *professional* land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a *professional* land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects *with* which he has been *associated*, recommendations by references, and a reviewing of these categories. *A land surveyor-in-training applicant's qualifications may be reviewed at an interview if the board considers it necessary.* Minimal educational requirements for those applicants who intend to use education *only* as evidence of qualification must include 40 quarter credit hours in surveying techniques and principles and practices of surveying curricula prescribed by the board."

Section 9. Section 37-67-309, MCA, is amended to read:

"37-67-309. Qualifications of applicant for registration as professional land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a *professional* land surveyor:

(1) have a bachelor of science degree in *civil engineering from a school approved by the accreditation board for engineering and technology or a bachelor of science degree in a board-approved* curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of experience *on* land surveying projects under the *direct* supervision of a *professional* land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in *a board-approved* curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying *satisfactory to the board*, with a minimum of 4 years of *progressive* experience *on* land surveying projects under the *direct* supervision of a *professional* land surveyor, and have passed the examinations as required by the board; or

(3) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying *satisfactory to the board*, with a minimum of 6 years of *progressive* experience *on* land surveying projects under the *direct* supervision of a *professional* land surveyor, and has passed the examinations as required by the board."

Section 10. Section 37-67-310, MCA, is amended to read:

"37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

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(1) have *a bachelor of science degree in civil engineering from a school approved by the accreditation board for engineering and technology or* a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a *professional* land surveyor, and have passed the written examinations required by the board;

(2) have at least 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 2 years in charge of land surveying projects under the supervision of a *professional* land surveyor, and have passed the written examinations required by the board; or

(3) present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a *professional* land surveyor, and has passed the examinations required by the board."

Section 11. Section 37-67-311, MCA, is amended to read:

"37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for *professional* land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration

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as a *professional* land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify."

Section 12. Section 37-67-313, MCA, is amended to read:

"37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued *by a proper authority of* a state, territory, or possession of the United States *or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued,* will be given comity consideration. However, he may be asked to *meet the conditions for taking and* take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state."

Section 13. Section 37-67-314, MCA, is amended to read:

"37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a *professional* land surveyor, "*professional* land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or *professional* land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "*professional* land surveyor". Plans, specifications, plats, *drawings,* reports, *design information, and calculations* prepared by a registrant *must* when issued be signed *with a written signature, dated,* and stamped with the seal or *a seal* facsimile. It *is* unlawful for a registrant to affix or permit his seal and signature or *seal* facsimile to be affixed to any plans, specifications, plats, *drawings,* reports, *design information, or calculations* after the expiration of a certificate or for *projects for which the registrant was not in responsible charge.*

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(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or *professional* land surveyor."

Section 14. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or *professional* land surveyor. For renewal of a dual license as both a professional engineer and *professional* land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially prior to the expiration date does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate prior to the expiration date shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid."

Section 15. Section 37-67-318, MCA, is amended to read:

"37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered *professional* land surveyors shall be published by the department. Copies shall be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to *each person registered and to* the public, on request, at a fee established by the board."

Section 16. Section 37-67-319, MCA, is amended to read:

"37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of

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business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a *professional* land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted."

Section 17. Section 37-67-331, MCA, is amended to read:

"37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or *professional* land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and *professional* land surveyors adopted by the board;

(e) if a *professional* land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action. *For purposes of investigation under this section, the board may require that a registrant meet with it.*

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to

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renew, or revoke the certificate of registration of the registered professional engineer or *professional* land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance."

Section 18. Section 37-67-332, MCA, is amended to read:

"37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired, revoked, *or emeritus* certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter."

Section 19. **Emeritus status.** (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

Section 20. **Extension of authority.** Any existing authority of the board of professional engineers and professional land surveyors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 21. **Codification instruction.** Sections 5 and 19 are intended to be codified as an integral part of Title 37, chapter 67, and the provisions of Title 37, chapter 67, apply to sections 5 and 19.

Approved April 19, 1985.

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CHAPTER NO. 554

[SB 451]

AN ACT PROVIDING FOR THE FAIR AND PROPER TREATMENT OF VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM; REQUIRING THE PROVISION OF SERVICES AND ASSISTANCE TO CRIME VICTIMS AND WITNESSES.

WHEREAS, without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with some exceptions, these individuals are either ignored by the criminal justice system or simply used as a means to identify and punish offenders; and

WHEREAS, all too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship, first as a result of the criminal act, and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim; and

WHEREAS, while the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed; and

WHEREAS, the victim and witness who cooperate with the prosecutor often find that they must share the pretrial waiting room with the defendant or his family and friends; and

WHEREAS, the victim may lose valuable property to a criminal only to lose it again for long periods of time to law enforcement officials until the trial, and sometimes until all appeals are over; and many times the property is damaged or lost, which is particularly stressful for the elderly or the poor; and

WHEREAS, the majority of serious crimes fall under the jurisdiction of state and local law enforcement agencies.

THEREFORE, the Legislature of the State of Montana finds it appropriate to provide for the fair and proper treatment of crime victims and witnesses in the criminal justice system.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature declares that the purposes of [this act] are to:

(1) protect the role of crime victims and witnesses in the criminal justice process;

(2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and

(3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

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Section 2. **Services to victims of crime.** Law enforcement personnel shall assure that a victim of a crime receives emergency social and medical services as soon as possible and that such victim is given information on the following:

(1) the availability of crime victim compensation;

(2) community-based victim treatment programs;

(3) the role of the victim in the criminal justice process, including what he can expect from the system, as well as what the system expects from the victim; and

(4) stages in the criminal justice process of significance to a crime victim and the manner in which information about such stages may be obtained.

Section 3. **Notification of available protective services.** Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation.

Section 4. **Scheduling changes.** (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

Section 5. **Prompt notification to victims and witnesses of felony offenses.** (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to his case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings; and

(c) proceedings in the prosecution of the accused, including entry of a plea of guilty, the setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense, a relative of such a victim or witness who is a minor, or a relative of a homicide victim.

Section 6. **Consultation with victim of felony offense.** The prosecuting attorney in a criminal case shall consult with the victim of a felony offense or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his family regarding the disposition of the case, including:

(1) dismissal of the case;

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(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process.

Section 7. **Property return.** A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

Section 8. **Notification to employer or creditor.** (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from his place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. Such agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for such serious financial strain.

Section 9. **Training in victim assistance.** The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

Section 10. **Duty of attorney general.** The attorney general shall assure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. In addition, the attorney general shall assure that victims and witnesses are provided important services and assistance as required under [this act].

Section 11. **No cause of action for damages.** Nothing in [sections 1 through 10] may be construed to create a cause of action for damages against the state or one of its political subdivisions.

Approved April 19, 1985.

CHAPTER NO. 555

[HB 160]

AN ACT REQUIRING THE FILING OF RECORDS OF MOBILE HOMES IN A SIMILAR MANNER AS THOSE OF MOTOR VEHICLES; REQUIRING FILING OF NOTICE OF INTENTION TO TRANSFER TITLE; AMENDING SECTION 61-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Mobile home or housetrailer — transfer of interest.** (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer shall be

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made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer.

(2) When a mobile home or house trailer is sold under contract or under such conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is thereafter responsible for payment of taxes upon the mobile home or housetrailer. The clerk and recorder shall immediately notify the county assessor of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer.

Section 2. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of division of motor vehicles — records. (1) The division of motor vehicles shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership thereof, and of all dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record shall show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) such other information as may from time to time be found desirable.

(3) The division shall file applications for registration received by it from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle;

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(d) such other index of registration as the division considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the division shall have the authority and it shall be its duty to destroy all records and files which have ceased to be of any value.

(7) The division may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

(8) All records shall be open to inspection during all reasonable business hours, and the division shall furnish any information from the records upon payment by the applicant of the cost of transcribing the information requested."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 3.

Approved April 19, 1985.

CHAPTER NO. 556

[HB 265]

AN ACT GENERALLY DEFINING LAWS RELATING TO RECREATIONAL USE OF STATE WATERS; PROHIBITING RECREATIONAL USE OF DIVERTED WATERS; RESTRICTING THE LIABILITY OF LANDOWNERS WHEN WATER IS BEING USED FOR RECREATION; ESTABLISHING THE RIGHT TO PORTAGE; PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY RECREATIONAL USE OF SURFACE WATERS; AMENDING SECTION 70-19-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For purposes of [sections 1 through 5], the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

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(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of [the effective date of this act]; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish and game commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or

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craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to [section 3(3)(b)] is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

Section 2. **Recreational use permitted — limitations — exceptions.** (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission of the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities which are not primarily water-related pleasure activities as defined in [section 1(10)].

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

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(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters which are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of such lands.

Section 3. **Right to portage — establishment of portage route.** (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of his rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure which does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of his rights as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that such a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of

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notification signs of such route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility thereafter to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), he may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in [this act] addresses the issue of natural barriers or portage around said barriers, and nothing contained in [this act] makes such portage lawful or unlawful.

Section 4. **Restriction on liability of landowner and supervisor.** (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to [section 2], or land while portaging around or over barriers or while portaging or using portage routes, pursuant to [section 3], does not have the status of invitee or licensee and is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

Section 5. **Prescriptive easement not acquired by recreational use of surface waters.** (1) A prescriptive easement is a right to use the

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property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; or

(b) the entering or crossing of private property to reach surface waters.

Section 6. Section 70-19-405, MCA, is amended to read:

"70-19-405. Title by prescription. *Except as provided in [section 5], occupancy* for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all."

Section 7. **Land title unaffected.** The provisions of [this act] and the recreational uses permitted by [section 2] do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

Section 8. **Lakes.** Nothing contained in [this act] addresses the recreational use of surface waters of lakes.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Applicability.** Sections 5 and 6 apply only to a prescriptive easement that has not been perfected prior to [the effective date of this act].

Section 11. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 557

[HB 341]

AN ACT TO PROVIDE CIVIL LIABILITY FOR A PERSON WHO WRONGFULLY STOPS PAYMENT ON A CHECK, DRAFT, OR AN ORDER FOR THE PAYMENT OF MONEY; AMENDING SECTIONS 27-1-717 AND 30-4-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check or stopping payment — civil liability. (1) A person who issues a check, draft, or an order for the payment of money is *liable for damages in a civil action as provided in subsection (2) to the person to whom the check, draft, or order is issued if the check, draft, or order is:*

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(a) dishonored for lack of funds or credit or because *the issuer* has no account with the drawee; *or*

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the engagement of the drawer provided for in 30-3-413 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply."

Section 2. Section 30-4-403, MCA, is amended to read:

"30-4-403. Customer's right to stop payment — burden of proof of loss. (1) *Subject to 27-1-717, a* customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in 30-4-303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only 6 months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer."

Approved April 19, 1985.

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CHAPTER NO. 558

[HB 346]

AN ACT PROVIDING THAT A PERCENTAGE OF TAXES PAID ON AUTOMOTIVE FUEL BEING LEGALLY CONSUMED IN AIRCRAFT BE PLACED IN THE AERONAUTICS REVENUE FUND OF THE DEPARTMENT OF COMMERCE; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account, ½ of 1% of all money shall be deposited in a snowmobile account in the state special revenue fund, *and 1/25 of 1% of all money shall be deposited in the aeronautics revenue fund of the department of commerce under the provisions of 67-1-301.* The remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion

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engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile account shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ½ of 1% is used for propelling snowmobiles on public lands of this state.

(6) Money credited to the aeronautics account of the department of commerce shall be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

CHAPTER NO. 559

[HB 358]

AN ACT TO CREATE A MISSING CHILDREN INFORMATION PROGRAM WITHIN THE DEPARTMENT OF JUSTICE; TO REQUIRE LAW ENFORCEMENT AUTHORITIES TO SUBMIT MISSING CHILDREN REPORTS TO THE PROGRAM; TO REQUIRE THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DISTRIBUTE MONTHLY TO THE SCHOOLS A LIST OF MISSING SCHOOL AGE CHILDREN; AND TO REQUIRE SCHOOLS TO CONTACT ANY PARENT WHOSE CHILD IS ABSENT WITHOUT PARENTAL VERIFICATION OF THE ABSENCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Missing Children Act of 1985".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

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(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in [section 3].

Section 3. **Missing children information program.** (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of [section 6].

Section 4. **Reports to missing children information program.** (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in [section 3] any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

Section 5. **Duties of law enforcement authority.** Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

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Section 6. **List of missing Montana school children.** (1) The superintendent of public instruction shall assist the missing children information program provided for in [section 3] in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in [section 3];

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

Section 7. **Notice to parents of children absent from school.** The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

Approved April 19, 1985.

CHAPTER NO. 560

[HB 412]

AN ACT TO CLARIFY CERTAIN DEFINITIONS USED IN SCHOOL SPECIAL EDUCATION LAW; AMENDING SECTION 20-7-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time *that adversely affects educational performance*: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. *The term includes a child who is schizophrenic.* The term does not include *a child* who *is* socially maladjusted, *unless it is determined that the child is emotionally disturbed.*

(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, deaf/blind, multihandicapped, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services. *A child who is 5 years of age or younger may be identified as handicapped without the handicapping condition being specified.*

(6) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.

(9) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly

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(e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(10) "Other health-impaired" means:

(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or

(b) having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(11) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology, audiology, occupational therapy, and physical therapy.

(12) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(13) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(14) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(15) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Section 2. **Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 19, 1985.

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CHAPTER NO. 561

[HB 440]

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO ENFORCE MAINTENANCE AWARDS TO CUSTODIAL PARENTS OF CHILDREN WHOSE SUPPORT IS BEING ENFORCED BY THE DEPARTMENT; PROVIDING THAT THE DEPARTMENT IS SUBROGATED TO THE AMOUNT OF PUBLIC ASSISTANCE PAID TO OR FOR THE BENEFIT OF A CHILD AND HIS CARETAKER UP TO THE AMOUNT OF THE SUPPORT AWARD; AMENDING SECTIONS 40-5-201, 40-5-202, AND 40-5-255, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" *or "support obligation"* means:

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(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; *or*

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent."

Section 2. Section 40-5-202, MCA, is amended to read:

"**40-5-202. Department of revenue — powers and duties regarding collection of support debt.** (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

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(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation *applies both* to:

(a) the lesser of the amount paid by the department in public assistance money to or for the benefit of a dependent child or children *of the responsible parent or the amount of support contained in the court order; and*

(b) to any amount allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 3. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent *or former spouse* which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 4. **Department authorized to enforce maintenance awards.** When a judgment or order creating a child support obligation also contains a judgment or order for the support of a former spouse and the former spouse is the custodial parent of the child, the department may collect and enforce spousal support under this part.

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Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 4C, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to section 4.

Section 6. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 19, 1985.

CHAPTER NO. 562

[HB 454]

AN ACT TO INCREASE THE SALARY OF AN ELECTED COUNTY SUPERINTENDENT OF SCHOOLS WHO HAS A MASTER'S DEGREE WITH AN ENDORSEMENT IN SCHOOL ADMINISTRATION; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, part-time county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) *An elected* county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, *except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.*

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

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(c) In counties with a population less than 30,000, the county attorney who is a part-time official shall receive, in addition to the salary based upon subsection (1), the sum of $1,200 per year. In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500.

(d) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500. Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.

(e) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

CHAPTER NO. 563

[HB 522]

AN ACT PROVIDING FOR LAWFUL SERVICE UPON CLAIMANTS OR OWNERS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE; AMENDING SECTIONS 44-12-201 THROUGH 44-12-203, 81-5-104, AND 81-5-106, MCA; AND REPEALING SECTION 81-5-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-12-201, MCA, is amended to read:

"44-12-201. Petition to institute forfeiture proceedings — summons — service. A peace officer or an officer of *an* agency *that* seizes any property other than controlled substances under the provisions of this

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chapter shall, within 45 days of the seizure, file a *petition* to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. *The* clerk shall *issue a summons at the request of the petitioning party, who shall cause the same to be served upon* all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by *personal service of* a copy of the *petition and summons as provided in the Montana Rules of Civil Procedure*;

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication *of the summons* in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, *and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the division of motor vehicles.*"

Section 2. Section 44-12-202, MCA, is amended to read:

"**44-12-202. Answer to allegations concerning use of property.** Within 20 days after the *service of the petition and summons* or publication of the *summons, as provided in 44-12-201*, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property *described* in the *petition* to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist."

Section 3. Section 44-12-203, MCA, is amended to read:

"**44-12-203. Presumption — procedure following answer or expiration of time for answering.** (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

(2) If a verified answer to the *petition* is not filed within 20 days after the *service* of the *petition and summons*, the court upon motion must order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than *60* days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of *the petition and summons.*"

Section 4. Section 81-5-104, MCA, is amended to read:

"**81-5-104. Stolen livestock — seizure and forfeiture of vehicle used to transport.** (1) The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry, or the products of any thereof *is* unlawful, and such vehicle shall be forfeited to the state. Any vehicle found in such use or upon probable cause believed to be devoted wholly or in part to such use shall be seized and held.

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(2) Within 45 days after the seizure, any peace officer or officer of the agency that seizes any property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle *is* not subject to forfeiture *under this section* if:

(a) it is a stolen vehicle at the time it is used for such unlawful transportation; *or*

(b) the owner thereof is not in collusion with the party or parties guilty of the theft."

Section 5. **Answer to allegations concerning use of property.** Within 20 days after the service of the petition and summons or publication of the summons, as provided in 81-5-104, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the petition to institute forfeiture proceedings. Only one 20-day extension of the time for filing the answer may be granted, and failure to answer within 20 days or within the 20-day extension bars the owner or claimants from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

Section 6. **Presumption — hearing — disposition of vehicle.** (1) There is a rebuttable presumption of forfeiture as to all property used for the transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds a vehicle was not used for the purpose charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds the vehicle was used for the purpose charged and

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was used with the knowledge and consent of the owner, the property must be ordered forfeited.

Section 7. Section 81-5-106, MCA, is amended to read:

"81-5-106. Sale at public auction. *Vehicles forfeited under [section 6]* shall be *sold* at public auction in the manner of sales of personal property under execution and may be *sold* by any sheriff, livestock inspector, or other peace officer."

Section 8. **Codification instruction.** Sections 5 and 6 are intended to be codified as an integral part of Title 81, chapter 5, part 1.

Section 9. **Repealer.** Section 81-5-105, MCA, is repealed.

Approved April 19, 1985.

CHAPTER NO. 564

[HB 523]

AN ACT PROVIDING AUTHORITY FOR STATE ACQUISITION OF ABANDONED RAILROAD RIGHTS-OF-WAY OR EASEMENTS THEREIN FOR FUTURE TRANSPORTATION CORRIDORS; AMENDING SECTION 60-11-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-11-111, MCA, is amended to read:

"60-11-111. Identification and acquisition of railroad rights-of-way. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service *or future use as transportation corridors* is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines *or easements therein.*

(2) The department of commerce:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsection (2)(a); *and*

(c) may negotiate for and acquire *easements in the rights-of-way or* the railroad rights-of-way and attendant facilities identified pursuant to subsection (2)(a) and:

(i) hold all such acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to such local authority all attendant

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facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (2)(c).

(3) Abandoned rights-of-way acquired and held in trust pursuant to subsection (2)(c)(i) must be administered by the department of state lands as prescribed in Title 77, until such time as the land is needed for transportation purposes."

Section 2. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 19, 1985.

CHAPTER NO. 565

[HB 601]

AN ACT EXEMPTING SMALL IRRIGATION DISTRICTS FROM AUDIT BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 2-7-503; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts, *except as provided in subsection (7)*;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6); and

(h) fire department relief associations.

(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

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(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee shall be paid by the governmental entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

(6) *(a)* Except as provided *in subsection 6(c)*, the department may not audit a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33.

(b) Such district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees.

(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.

(7) (a) Except as provided in subsection (7)(c), the department may not audit an irrigation district with annual expenditures of less than $30,000, excluding the payment of principal and interest on federal loans.

(b) Such irrigation district shall annually file with the clerk of the district court in the county in which the irrigation district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the irrigation district trustees.

(c) The district court may require an annual audit to be conducted by the department if it considers such audit to be in the public interest."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 566

[HB 611]

AN ACT REQUIRING THAT CERTAIN BEARS, WOLVES, TIGERS, MOUNTAIN LIONS, OR COYOTES CAPTURED OR HELD IN CAPTIVITY BE PERMANENTLY TATTOOED OR OTHERWISE PERMANENTLY IDENTIFIED; PROVIDING A PENALTY; AND PROVIDING COMPENSATION FOR DAMAGE CAUSED BY SUCH ANIMALS HELD IN CAPTIVITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tattooing of bears, wolves, tigers, mountain lions, or coyotes — when required — penalty.** (1) Any bear, wolf, tiger, mountain lion, or coyote that is captured alive to be later released or which is

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held in captivity for any purpose must be reported to the department within 3 days of the capture or commencement of captivity. If a person capturing or holding in captivity such animal fails to report an animal as required by this section, such failure is a misdemeanor punishable as provided in 87-1-102.

(2) Each animal reported as required in subsection (1) shall be permanently tattooed or otherwise permanently identified in a manner that will provide positive individual identification of such animal. No tattoo is required under this section if the animal is subject to a permanent, individual identification process by another state or federal agency.

(3) Any person holding a bear, wolf, tiger, mountain lion, or coyote in captivity shall immediately report to the department any death, escape, release, transfer of custody, or other disposition of such animal.

Section 2. **Tattoo records.** (1) The department shall maintain a record of each animal reported to it pursuant to [section 1]. The record shall indicate:

(a) the person by whom the animal was captured or is held in captivity;

(b) the location of the capture or captivity;

(c) the date the animal was tattooed;

(d) the purpose of the captivity or capture; and

(e) any death, escape, release, transfer of custody, or other disposition of such animal.

(2) The department shall establish by rule a fee to be charged, which may not exceed the administrative cost of maintaining the record required by this section.

Section 3. **Compensation for damage caused by animal held in captivity.** If any bear, wolf, tiger, mountain lion, or coyote that is held in captivity or that escapes from such captivity causes any damage to the personal property of another person, compensation for such damage must be paid by the person holding or who held the animal in captivity.

Section 4. **Exceptions.** This act does not apply to those animals:

(1) captured and released as part of an ongoing game management program or an ongoing predator control program unless such animals have been involved in livestock killing; or

(2) captured and released as part of a scientific, educational, or research program as certified by the department.

Section 5. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87 apply to sections 1 through 4.

Approved April 19, 1985.

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CHAPTER NO. 567

[HB 673]

AN ACT TO CHANGE THE TIME WHEN A LOCAL GOVERNMENT MAY BRING A SUIT CHALLENGING THE VALIDITY AND CONSTITUTIONALITY OF A PETITION AND PROPOSED ACTION; REVISING THE PROVISION RELATING TO CONTENTS OF THE COMPLAINT IN SUCH A SUIT; PROVIDING FOR PRECEDENCE OF SUCH A SUIT IN THE COURT; TOLLING THE TIME LIMIT FOR COLLECTION OF SIGNATURES; AND AMENDING SECTION 7-5-135, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-135, MCA, is amended to read:

"7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) *The* governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional, *but such a suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.*

(2) *An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.*

(3) If the defendant prevails, he is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit."

Approved April 19, 1985.

CHAPTER NO. 568

[HB 763]

AN ACT TO PROVIDE FOR SPECIAL WILD BUFFALO LICENSES AND FOR REGULATION OF SPECIAL WILD BUFFALO LICENSES; AMENDING SECTIONS 87-2-101 AND 87-2-701, MCA; REPEALING SECTION 87-5-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in this chapter and chapter 3, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Angling" or "fishing" means the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control.

(2) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(3) "Commission" means the state fish and game commission.

(4) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(5) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, *and wild buffalo.*

(6) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves shall be restricted to the open season on upland game birds as defined in subsection (12) below.

(8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(9) "Open season" means the time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

(10) "Person" means individuals, associations, partnerships, and corporations.

(11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(12) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(13) "Wild buffalo" means buffalo or bison which have not been reduced to captivity."

Section 2. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

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(a) moose—resident, $50; nonresident, $300;

(b) mountain goat—resident, $50; nonresident, $300;

(c) mountain sheep—resident, $50; nonresident, $300;

(d) antelope—resident, $6; nonresident, $100;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black or brown bear—nonresident, $100;

(g) wild buffalo—resident, $200; nonresident, $1,000.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department."

Section 3. **Regulation of special wild buffalo licenses.** The department shall adopt rules regulating special wild buffalo licenses. The rules shall provide for:

(1) license drawing procedures based on a year-round season;

(2) an entry fee for the drawing of a license, which must be a minimum of $5;

(3) notification of license recipients as to when and where they may hunt;

(4) means of taking;

(5) tagging requirements for carcasses, skulls, and hides;

(6) possession limits; and

(7) requirements for transportation and exportation.

Section 4. **Fees used for management of Yellowstone national park wild buffalo herd.** The money collected from drawing and license fees must be placed in a special fund to manage and control the wild buffalo entering Montana from the Yellowstone national park herd.

Section 5. **Repealer.** Section 87-5-303, MCA, is repealed.

Section 6. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87 apply to section 3.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

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CHAPTER NO. 569

[HB 889]

AN ACT TO GENERALLY REVISE LAWS CONCERNING JUSTICES' COURTS; APPLYING THE FEE SCHEDULE FOR SERVICES PERFORMED BY SHERIFFS TO CONSTABLES; REVISING COURT FEES IN CIVIL ACTIONS FILED IN JUSTICES' COURTS; PERMITTING JUSTICES' COURTS TO POSTPONE TRIALS FOR A MAXIMUM OF 4 MONTHS FOR GOOD CAUSE; AMENDING SECTIONS 3-10-702, 25-31-112, AND 25-31-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-702, MCA, is amended to read:

"**3-10-702. Governed by law prescribing sheriffs' duties.** *(1)* All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121, except subsections (4), (5), and (6), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2132, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, 25-31-408(3), 27-18-305, and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.

(2) The provisions of 7-32-2141(1) apply to constables. Fees collected by a constable for services as provided in 7-32-2141(1) must be paid to the county treasurer as provided in 7-4-2511(2) and credited to the budget of the justice's court."

Section 2. Section 25-31-112, MCA, is amended to read:

"**25-31-112. Fees.** The following is the schedule of fees which, except as provided in 25-35-605, shall be paid in every civil action in a justice's court:

(1) *$10* when complaint is filed, to be paid by the plaintiff;

(2) *$10* when the defendant appears, to be paid by the defendant;

(3) *$10* to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the *$10* for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) *$10* for all services in an action where judgment is rendered by confession;

(5) *$10* for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Section 3. Section 25-31-703, MCA, is amended to read:

"**25-31-703. Postponement by motion of court.** The court may, of its own motion, postpone the trial *for not exceeding 4 months for good cause."*

Approved April 19, 1985.

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CHAPTER NO. 570

[HB 317]

AN ACT TO CLARIFY THE DEFINITION OF "LIVESTOCK" FOR PURPOSES OF PROPERTY TAXATION; AMENDING SECTIONS 15-1-101, 15-6-136, 15-6-207, AND 15-24-901, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) *Except as otherwise specifically provided, when* terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, *bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of* field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(f) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(g) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(h) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or

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"trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(i) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(j) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(k) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(l) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(m) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock, poultry, *bees, and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit,* and the unprocessed products of *such animals and wildlife*;

(b) all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer;

(c) items of personal property intended for lease in the ordinary course of business provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein

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no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) Class six property is taxed at 4% of its market value."

Section 3. Section 15-6-207, MCA, is amended to read:

"**15-6-207. Agricultural exemptions.** The following agricultural products are exempt from taxation:

(1) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(2) all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest;

(3) *except as provided in subsection (4),* livestock which have not attained the age of 9 months as of the last day of any month if assessed on the average inventory basis or on March 1 if assessed as provided in 15-24-911(1)(a)*;* and

(4) swine which have not attained the age of 3 months as of January 1."

Section 4. Section 15-24-901, MCA, is amended to read:

"**15-24-901. Definition.** *As used in this part, "livestock" includes those animals specified in 15-1-101(1)(g).*"

Section 5. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 19, 1985.

CHAPTER NO. 571

[HB 443]

AN ACT TO REQUIRE, IN CHILD SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE, THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT OF SUPPORT PAYABLE FOR 1 MONTH; TO REQUIRE THE DEPARTMENT TO FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 21] may be cited as the "Child Support Enforcement Act of 1985".

Section 2. **Purpose.** The purpose of [sections 1 through 21] is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such

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support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

Section 3. **Definitions.** As used in [sections 1 through 21], the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(6) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

Section 4. **Income withholding.** (1) Whenever an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established by order of a court or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under [sections 1 through 21].

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(2) When the requirements of [sections 1 through 21] have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages due when the withholding order takes place.

(3) The provisions for income withholding under [sections 1 through 21] take precedence over any other law or court order.

Section 5. **Initiation of income withholding procedures.** (1) In each case in which the department is enforcing a support order assigned to the state pursuant to 53-2-613 or in which the department is collecting support on behalf of an obligee who has applied for services under 40-5-203, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes any combination of unpaid support equal to or in excess of 1 month's support payment, the department shall commence withholding from the obligor's income.

(2) To accomplish the purpose of subsection (1), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.

(3) Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor.

Section 6. **Notice of intent to withhold income.** (1) Prior to service of an order on the payor to commence income withholding, the department shall serve upon the obligor a notice of the intended withholding action. The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under [section 7] to contest the implementation of income withholding on the ground that withholding, including the amounts to be withheld, is not proper because of mistake of fact; and

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor.

(2) The notice must be served upon the obligor personally or by certified mail.

Section 7. **Hearing.** (1) The obligor may within 10 days of being served with notice of the intended income withholding under [section 6] file

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with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) If the obligor requests a hearing within the time allowed, income withholding may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

(3) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(4) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(5) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding.

(6) The obligor within 45 days of service of the notice of intent to withhold income must be informed of the hearing decision on whether income withholding will take place.

Section 8. **Order to withhold income.** (1) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support payment, the department shall immediately serve an order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department; and

(d) state the rights and duties of the payor under this part.

(2) An order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors.

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Section 9. **Determination of amount of income to be withheld.** (1) Except as provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be:

(a) the amount of money necessary to pay current installments of support as they become due and payable; plus

(b) the amount of money which, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; plus

(c) a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b).

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages.

Section 10. **Duties of payor.** (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department.

(2) If the obligor's pay periods are at intervals of less than 1 month, the payor may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly withholding as directed by the withholding order.

(3) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

(4) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in [section 9].

(5) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor.

Section 11. **Civil liability for failure to comply with income withholding order.** (1) A payor who fails to withhold and deliver support money from the obligor's income when ordered to do so under [section 8]

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is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered.

(2) No payor who complies with an order to withhold under [sections 1 through 21] is liable for wrongful withholding to the obligor or to any other person claiming rights derived from the obligor.

Section 12. **Obligor rights protected.** No employer may discharge, discipline, or refuse to hire an obligor because of the institution of income withholding on the obligor's income or the initiation of proceedings under [sections 1 through 21]. Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and back-pay.

Section 13. **Priority of income withholding.** An order to withhold and deliver income under [sections 1 through 21] takes priority over any:

(1) wage or income deduction order under any other state law;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor's income;

(4) levies, writs of execution, or garnishments of the obligor's income; and

(5) any other claims by creditors.

Section 14. **Modification or termination of withholding orders.** (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

Section 15. **Payment records.** (1) The department, in collecting, disbursing, or receiving payments pursuant to orders to withhold income, shall maintain complete, accurate, and clear records of all payments and disbursements.

(2) Certified payment records maintained by the department must, without further proof or foundation, be admitted into evidence in any legal proceedings under [sections 1 through 21]. Such records constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to monitor support payment in a case.

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Section 16. **Registration of interstate income withholding orders.** (1) Whenever an obligor, whether or not he resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department.

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications thereof;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of such income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to such other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department.

Section 17. **Application for interstate withholding.** (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for interstate income withholding must include:

(a) a certified copy of the support order, with all modification thereof;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if such records are maintained by the agency or any other agency within that jurisdiction;

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(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall commence procedures to establish orders for income withholding, including notice and opportunity for hearing under [sections 1 through 21]. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with [section 7], a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the interstate aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within such time and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit.

Section 18. **Additional duties of department in interstate income withholding.** (1) Unless the public agency of the foreign jurisdiction makes application to the department for additional services, the department is not required to locate the obligor or to locate payors of income to the obligor. If the application for interstate service provided for in [sections 16 and 17] fails to provide this information or the information is determined to be incorrect, the department may return the application without further proceeding under [sections 1 through 21].

(2) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(3) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application.

Section 19. **Initiation of income withholding in other jurisdictions.** Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income in another state, the department shall

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request the agency responsible for income withholding in that state to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other state all documentation required by the law of that state necessary for the purpose of obtaining an income withholding order in that state. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.

Section 20. **Remedies additional to those now existing.** The remedy provided in [sections 1 through 21] is in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

Section 21. **Rulemaking authority.** The department shall adopt rules and forms to participate in and carry out the provisions of [sections 1 through 21].

Section 22. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Codification instruction.** Sections 1 through 21 are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to sections 1 through 21.

Section 24. **Effective date.** Section 21 and this section are effective on passage and approval, except that rules adopted under section 21 may not be made effective prior to October 1, 1985.

Approved April 19, 1985.

CHAPTER NO. 572

[HB 571]

AN ACT PROVIDING FOR THE MANDATORY LICENSING AND REGULATION OF PROFESSIONAL COUNSELORS; CREATING A COMMUNICATIONS PRIVILEGE; PROVIDING PENALTIES FOR VIOLATIONS; AND REQUIRING AN INSURER OR HEALTH SERVICE CORPORATION TO OFFER, IF REQUESTED, ADDITIONAL DISABILITY AND HEALTH INSURANCE COVERAGE FOR WORK DONE BY LICENSED PROFESSIONAL COUNSELORS; AMENDING SECTIONS 2-15-1854, 33-22-111, AND 37-22-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of [sections 1 through 13] to provide for the

common good by ensuring ethical, qualified, and professional practice of professional counseling. [Sections 1 through 13] and the rules promulgated under [section 3] set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

Section 2. **Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under [sections 1 through 13].

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means assisting an individual or a group, through the counseling relationship, to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting his or their needs, interests, and abilities, and to use informational and community resources;

(b) appraisal, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) technical assistance, which means applying scientific principles and procedures in counseling, guidance, and human development to provide assistance in understanding and solving a current or potential problem that an individual may have in relation to another individual, a group or organization, or other third party; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of such judgment, and communicating as requested or considered appropriate with such referral sources.

Section 3. **Powers and duties of board.** (1) The board shall:

(a) recommend amendments to [sections 1 through 13] to the governor or the legislature, or both;

(b) recommend prosecutions for violations of [section 13] to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) establish requirements for continuing education that are conditions of license renewal;

(e) meet to perform the duties described in this section;

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(f) adopt rules that set professional and ethical standards for licensed professional counselors which are based on national standards and such other rules as may be reasonably necessary for the administration of [sections 1 through 13]; and

(g) distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued.

Section 4. **Representation to public as licensed professional counselor — limitations on use of title.** (1) No person may represent himself to be a licensed professional counselor by adding the letters "LPC" after his name or by any other means unless licensed under [sections 1 through 13]; and

(2) Subsection (1) does not prohibit:

(a) a qualified member of another profession, such as a physician, psychologist, lawyer, pastoral counselor, probation officer, court employee, nurse, social worker, school counselor, or educator, from professional counseling consistent with his training if he does not hold himself out to the public by a title or description incorporating the words "licensed professional counselor", "licensed counselor", or "professional counselor";

(b) an activity or service or use of an official title by a person employed by a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform such activity or service. However, such person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activity or service in the state of his former residence.

Section 5. **Licensure requirements.** (1) To be licensed on or before December 31, 1987, as a professional counselor under [sections 1 through 13], an applicant must have satisfactorily completed:

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(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;

(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;

(c) and passed an examination prepared and administered by the board based on a national examination approved by the board; and

(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related professionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.

(2) To be licensed after December 31, 1987, an applicant must have satisfactorily completed:

(a) a planned graduate program of 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse his application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by the board based on a national examination approved by the board; and

(d) an application form and process prescribed by the board.

Section 6. **Fees.** (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board commensurate with costs.

(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.

(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

Section 7. **Issuance, effective date, and display of license.** (1) If an applicant meets the requirements contained in [section 5] and has paid the appropriate fees, the board shall issue a license to the applicant attesting to the date and fact of licensure. The license is effective on the date of issuance and must be renewed every year as provided in [section 9].

(2) The license must be displayed in the registrant's place of business or employment.

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Section 8. **Reciprocity.** Upon payment of the license fee provided for in [section 6], the board may issue a license to a person who, at the time of application, is licensed or certified as a professional counselor by an agency located in another state if the requirements of such licensure or certification are substantially similar to the requirements of [sections 1 through 13].

Section 9. **Renewal of license.** (1) A license may be issued for no longer than 1 year. The board may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements established by the board.

Section 10. **Suspension or revocation of license.** (1) The board may suspend or revoke the license of a person found according to the procedure contained in [section 11] to have violated a professional or ethical standard adopted by the board. A person may not practice counseling in this state as a licensed professional counselor during the period for which his license is suspended or revoked.

(2) The board may not suspend a license for more than 6 months. Upon termination of the suspension period, the person whose license has been suspended must undergo a board review before resuming practice as a licensed professional counselor.

(3) The board may not revoke a license for less than 3 years. Upon termination of the revocation period, the person whose license has been revoked may apply to the board for reinstatement.

Section 11. **Procedure for charging violation of professional or ethical standard.** (1) A member of the board or any other person may charge a licensee with violating a professional or ethical standard adopted by the board. The charge must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department of commerce. The charge must be investigated by the board, and unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to suspend or revoke his license and the notice contains those matters required by 2-4-601.

(2) A hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

Section 12. **Privileged communications — exceptions.** A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

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(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

Section 13. **Misdemeanor violations — penalties.** (1) It is a misdemeanor for a person to knowingly:

(a) represent himself as a licensed professional counselor without being licensed under [sections 1 through 13];

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement [sections 1 through 13] or the rules adopted under [sections 1 through 13].

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both such fine and imprisonment.

Section 14. Section 33-22-111, MCA, is amended to read:

"**33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist. *An insurer shall offer, at additional cost to the insured, the option of disability and health insurance coverage for services performed by a licensed professional counselor.*

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(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 15. **Coverage for services provided by professional counselors.** A health service corporation, if requested, shall provide in group insurance contracts, at an additional cost, coverage for services performed by a licensed professional counselor.

Section 16. **Licensure of certain board members appointed to board of social work examiners and professional counselors.** Notwithstanding the qualifications for appointment contained in 2-15-1854, a person may be appointed to the board without being licensed as a professional counselor if he is issued a license under this act within 30 days after his appointment.

Section 17. Section 2-15-1854, MCA, is amended to read:

"2-15-1854. Board of social work examiners and professional counselors. The governor shall appoint a board of social work examiners *and professional counselors* consisting of *seven* members.

(1) Three members must be licensed social workers, and *three must be licensed professional counselors.*

(2) One member must be appointed from and represent the general public and may not be engaged in social work.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124."

Section 18. Section 37-22-102, MCA, is amended to read:

"37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners *and professional counselors* established under 2-15-1854.

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

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(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work."

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

CHAPTER NO. 573

[HB 680]

AN ACT REVISING STATE WATER POLICY TO MAXIMIZE MONTANA'S INTERESTS IN THE INTERSTATE ALLOCATION OF WATER; AMENDING CRITERIA FOR WATER APPROPRIATION AND CHANGES IN APPROPRIATION; PROVIDING FOR A LIMITED WATER LEASING PROGRAM; EXEMPTING WATER RESERVATIONS FROM THE LEASING PROGRAM; PLACING CERTAIN PIPELINES UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR WATER RESERVATIONS IN THE MISSOURI RIVER BASIN; ESTABLISHING A WATER RESOURCES DATA MANAGEMENT SYSTEM; CREATING A PERMANENT WATER POLICY COMMITTEE; REPEALING THE BAN ON THE USE OF WATER FOR COAL SLURRY; AMENDING SECTIONS 75-20-104, 75-20-202, 75-20-218, 75-20-303, 75-20-1202, 85-1-203 THROUGH 85-1-205, 85-1-621, 85-2-102, 85-2-112, 85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312, 85-2-316, 85-2-402, MCA, AND SECTION 7, CHAPTER 706, LAWS OF 1983; REPEALING SECTION 85-2-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Select Committee on Water Marketing was commissioned by the 1983 Legislature to undertake a study of the advantages and disadvantages of water marketing; and

WHEREAS, the Select Committee in completing its study determined that Montana needs to address broader questions of water policy in order

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to secure Montana's interests in allocation and management of state waters; and

WHEREAS, the Select Committee has presented a comprehensive package of recommendations that must be considered as a whole; and

WHEREAS, these recommendations serve to revise Montana's water policy in order to maximize Montana's authority over management of state waters and other natural resources and to conserve water for existing and future beneficial uses by Montanans.

THEREFORE, the Legislature of the State of Montana finds that this legislation and other recommendations of the Select Committee on Water Marketing constitute an appropriate revision of state water policy necessary to secure Montana's interests for present and future benefit to Montanans.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses*; and*

(b) a use of water appropriated by the department for the state water leasing program under [section 13] and of water leased under a valid lease issued by the department under [section 13].

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(14) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(15) "Water division" means a drainage basin as defined in 3-7-102.

(16) "Water judge" means a judge as provided for in Title 3, chapter 7.

(17) "Water master" means a master as provided for in Title 3, chapter 7.

(18) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-1-204, MCA, is amended to read:

"85-1-204. Department powers over state waters. (1) The department, with the approval of the board, may sell, lease, and otherwise dispose of all waters which may be impounded under this chapter, and the water may be sold for the purpose of irrigation, development of power, watering of stock, or any other purpose. *The department, with the approval of the board, may also lease water under the state water leasing program established under the provisions of [section 13].* To the extent that it may be necessary to carry out this chapter and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the same for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

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(3) The department may take into consideration the decrees of the courts of this state having jurisdiction which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners. The owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream it may divert or authorize the diversion at any point on the stream or any portion thereof when it is done without injury to a prior appropriator."

Section 3. Section 85-2-301, MCA, is amended to read:

"85-2-301. Right to appropriate. *(1)* After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may only appropriate water for a beneficial use.

(2) (a) Only the department may appropriate water by permit in either of the following instances:

(i) for transport outside the following river basins:

(A) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(B) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(C) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(D) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(E) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(F) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota; or

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(ii) whenever water in excess of 4,000 acre-feet a year and 5.5 cubic feet per second, for any use, is to be consumed.

(b) Water for these purposes or in these amounts may be leased from the department by any person under the provisions of [section 13].

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive."

Section 4. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) *through (4)*, the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(2) The department may not issue a permit for an appropriation of *4,000* or more acre-feet of water a year *and 5.5* or more cubic feet per second of water unless *the applicant proves by clear and convincing evidence that*:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity *and* quality of water for existing beneficial uses in the source of supply;

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(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) An appropriation, diversion, impoundment, *use,* restraint, or attempted appropriation, diversion, impoundment, *use,* or restraint contrary to the provisions of this section is *invalid.* No officer, agent, agency,

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or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, *use,* or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, *use,* or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. *The department* may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to *satisfy the criteria listed in 85-2-311,* and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department may limit the time for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

(4) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county."

Section 6. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of *4,000* or more acre-feet per year *and 5.5* or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing,

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repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus ½ of 1% of the estimated cost over $20 million and up to $100 million; plus ¼ of 1% of the estimated cost over $100 million and up to $300 million; plus ⅛ of 1% of the estimated cost over $300 million. The fee shall be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

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Section 7. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not *make a change in an appropriation right* except as permitted under this section and *with the approval of the department or, if applicable, of the legislature.*

(2) *Except as provided in subsections (3) through (5), the* department shall approve *a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:*

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(3) *The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:*

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may *not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:*

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

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(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) *(a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:*

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) *For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change.*

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The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change.

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 8. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, *pipelines*, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility *or a natural gas or crude oil gathering line 17 inches or less in inside diameter.*

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

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(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

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(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline, *whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length,* and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 9. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75,

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chapter 1, pursuant to Executive Order 4-81 and prior to [the effective date of this act]."

Section 10. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. *Certification* hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

Section 11. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

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(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(10) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) of 75-20-104(10) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 12. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) "Nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

(2) "Facility", as defined in 75-20-104*(10)*, is further defined to include any nuclear facility as defined in subsection (1)(a) of this section."

Section 13. **Water leasing program.** (1) There is a water leasing program administered by the department on behalf of the state of Montana. Water leases issued under this program must be approved by the board.

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

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(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck Reservoir, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of revenues with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail Reservoirs if and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenues with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and the sharing of revenues with the state.

(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses shall not exceed 50,000 acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations set forth in subsection (7). In making such a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by any person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. Such a determination of desirability shall be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

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(8) The department shall for any agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by such user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit as provided in 85-2-102 and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor.

Section 14. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in federal reservoirs. The department may acquire water or water storage by purchase option or agreement with the federal government from any federal reservoir for the purpose of sale, rent, or distribution for *any beneficial use.* In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate."

Section 15. Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Water may be reserved only for existing or future beneficial uses in the following river basins:

(a) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(b) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(c) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(d) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(e) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(f) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in

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85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement shall be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the board may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the board shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

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(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of such applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(9) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

(13) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits

of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(14) Water reserved under this section is not subject to the state water leasing program established under [section 13]."

Section 16. **Reservations within Missouri River basin.** (1) The state or any agency or political subdivision thereof or the United States or any agency thereof that desires to apply for a reservation of water in the Missouri River basin shall file an application pursuant to 85-2-316 no later than July 1, 1987.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin.

(3) Before December 31, 1989, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1987, for reservations of water in the Missouri River basin.

(4) Water reservations approved by the board under this section have a priority date of July 1, 1985. The board shall by order establish the relative priority of applications approved under this section.

Section 17. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system.

(5) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

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(6) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(7) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

Section 18. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) The department shall formulate and, with the approval of the board, adopt and from time to time amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan or any section thereof, the department shall hold public hearings in the state or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of the hearing or hearings shall be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least 30 days prior to the hearing.

(3) The department shall submit to *the water policy committee established in [section 20] and to* each general session of the legislature the state water plan or any section thereof or amendments, additions, or revisions thereto which the department has formulated and adopted.

(4) The department shall prepare a continuing inventory of the groundwater resources of the state. The groundwater inventory shall be included in the comprehensive water resources inventory described in subsection (1) above but shall be a separate component thereof.

(5) The department shall publish the comprehensive inventory, the state water plan, the groundwater inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(6) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in [section 20] and solicit the advice of the committee in carrying out its duties under this section."

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Section 19. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report to the legislature.** The department shall prepare a biennial report to the legislature describing the status of the water development program. The report must describe ongoing projects and activities and those which have been completed during the biennium. *The report must identify and rank in order of priority the projects for which the department desires to seek congressional authorization and funding and the efforts the department will undertake in attempting to secure such authorization and funding.* The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report shall be submitted to the president of the senate and the speaker of the house, *to the members of the water policy committee established in [section 20],* and to such other members *of the legislature* as may request a copy."

Section 20. **Water policy committee.** (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice-chairman. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments which affect Montana's water resources;

(b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's water development program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature, not less than once every biennium.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants,

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in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section.

Section 21. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** A person who violates or refuses or neglects to comply with *the provisions of this chapter*, any order of the department, or any rule of the board is guilty of a misdemeanor."

Section 22. **Extension of authority.** Any existing authority of the board and the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 23. Section 7, Chapter 706, Laws of 1983, is amended to read:

"Section 7. **Termination date.** *Section 4 of [this act]* terminates July 1, 1985. *The other sections do not terminate and are permanent law.*"

Section 24. **Repealer.** Section 85-2-104, MCA, is repealed.

Section 25. **Codification instruction.** Sections 13, 16, and 20 are intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to sections 13, 16, and 20.

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. **Applicability.** This act applies to all permit applications, change in appropriation right applications, water sales and lease applications, and reservation applications filed and pending with the department on July 1, 1985, but upon which a hearing under Title 85, chapter 2, has not yet commenced.

Section 28. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

CHAPTER NO. 574

[HB 711]

AN ACT ALLOWING A GOVERNING BODY OF A COUNTY TO PROHIBIT THE SALE AND DISTRIBUTION OF CERTAIN PHOSPHORUS COMPOUNDS USED FOR CLEANING PURPOSES; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A MODEL RULE; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, Montana's outstanding environmental and economic values depend on maintaining excellent water quality; and

WHEREAS, phosphorus is a nutrient that stimulates the growth of algae and contributes to a decline in water quality in certain lakes and rivers; and

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WHEREAS, substantial amounts of phosphorus enter Montana's aquatic ecosystems as a result of the use of detergents; and

WHEREAS, many studies have shown that regional restrictions on the use of nonessential detergent phosphorus compounds have protected and enhanced water quality; and

WHEREAS, the Department of Health and Environmental Sciences has determined that excessive amounts of culturally derived phosphorus are jeopardizing water quality in some of Montana's most outstanding waters; and

WHEREAS, the Department of Health and Environmental Sciences has the expertise to develop a model rule to effectively limit the amount of detergent phosphorus compounds that will enter state waters; and

WHEREAS, a limitation on the sale and distribution of certain detergent phosphorus compounds may best be enacted to meet local needs and circumstances; and

WHEREAS, such a limitation will not cause additional costs or burdens to consumers and retailers.

THEREFORE, the Legislature finds it appropriate to allow county governments to protect and enhance water quality by prohibiting the sale and distribution of certain nonessential detergent phosphorus compounds, following the technical standards established by the Department of Health and Environmental Sciences.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds.** (1) The department [of health and environmental sciences] shall adopt a model rule to provide standards that counties may adopt under [section 4] to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule.

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Section 2. **Prohibition of enforcement by department.** The department may not enforce any standard or provision of the model rule. As provided in [section 4], the governing body of a county may adopt and enforce as an ordinance the standards contained in the model rule.

Section 3. **Distribution of model rule.** The department shall send to the governing body of each county a notice of any rulemaking proceeding or hearing under [section 1], a copy of the model rule, and a copy of any amendment proposed or adopted.

Section 4. **County regulation of sale and distribution of certain phosphorus compounds.** (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal such ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may only be adopted if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of health and environmental sciences or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of health and environmental sciences under [section 1] and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county.

Section 5. **Penalty.** (1) A person involved in the sale or commercial distribution of any phosphorus compound prohibited by an ordinance adopted under [section 4] must be notified by the county and must be given 30 days from receipt of such notice to comply with the ordinance. Failure to comply with the ordinance following this 30-day period is a misdemeanor. Each day of violation is a separate offense.

(2) The penalty provided for in subsection (1) applies only to persons engaged in the sale or commercial distribution of prohibited phosphorus compounds. The county may not prosecute or otherwise penalize a person for using a phosphorus compound regulated by an ordinance adopted under [section 4].

Section 6. **Effective date.** This act is effective July 1, 1986.

Approved April 19, 1985.

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CHAPTER NO. 575

[HB 778]

AN ACT REVISING THE WORKERS' COMPENSATION ACT PROVISIONS RELATING TO THE AMOUNT OF ATTORNEY FEES, WHEN THEY MAY BE ASSESSED, AND THE ASSESSMENT METHOD; AMENDING SECTION 39-71-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and attorneys' fees that may be assessed against an employer or insurer by workers' compensation judge. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, *the case is brought before the workers' compensation judge for adjudication of the controversy,* and the award *granted by the judge* is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the workers' compensation judge if the case has gone to a hearing may be awarded *by the judge* in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the workers' compensation judge."

Section 2. **Calculation of attorney fees.** (1) The amount of an attorney's fee assessed against an employer or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before the workers' compensation judge. The attorney must document the time spent and give the documentation to the judge. The judge shall determine a reasonable attorney fee and assess costs. He is not bound by the documentation submitted to him. The hourly fee the judge applies to the time spent must be based on the attorney's customary and current hourly fee for legal work performed in this state.

(2) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an employer or insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

Section 3. **Extension of authority.** Any existing authority of the office of the workers' compensation judge to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to section 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 576

[HB 864]

AN ACT PROVIDING THAT CANDIDATES' NAMES NEED NOT BE ROTATED ON CERTAIN PAPER BALLOTS REQUIRED TO BE AVAILABLE WHERE VOTING DEVICES ARE USED; PROVIDING THAT IF THE NAMES ARE NOT ROTATED, THEIR ARRANGEMENT ON THE BALLOT MUST BE DETERMINED BY LOT; AMENDING SECTIONS 13-12-205 AND 76-15-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-12-205, MCA, is amended to read:

"13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2) *(a) Except as provided in subsection (3), if* two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.

(e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

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(3) In a precinct where voting devices are used, the election administrator need not rotate candidates' names as provided in subsection (2) on paper ballots required under 13-17-305; however, if more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot."

Section 2. Section 76-15-303, MCA, is amended to read:

"76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of all individuals nominated by petition (if six or fewer) or by election shall be printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain registered electors prior to each general election and each primary election in which more than four candidates are nominated. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13."

Section 3. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 19, 1985.

CHAPTER NO. 577

[HB 506]

AN ACT ESTABLISHING A NOXIOUS WEED MANAGEMENT TRUST FUND; AUTHORIZING A NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL; PROVIDING FUNDING FOR NOXIOUS WEED MANAGEMENT PROGRAMS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of agriculture established in 2-15-3001.

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(2) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any noxious weed. The term does not include herbicides labeled only for home, yard, or garden use and sold in containers of less than 10 pounds or 1 gallon.

(3) "Noxious weed" means any weed defined and designated as a noxious weed by rule of the department.

(4) "Retail value" means the suggested or retail price to the consumer of a given herbicide as established by the registrant, or as determined by a survey of dealers conducted by the department.

(5) "Sale" includes only the sale of a herbicide to an applicator or consumer. Sales between or to distributors, dealers, or retailers are not included.

Section 2. **Noxious weed management trust fund.** There is a noxious weed management trust fund, which must be funded from revenue collected under [sections 3 and 4]. The department shall administer the trust fund in accordance with [this act].

Section 3. **Surcharge imposed on retail sales of herbicides — disposition of proceeds.** (1) There is imposed a surcharge of 1 cent per dollar of the retail value of all registered herbicides sold for consumer use in the state. The volume of sales of each registered herbicide must be determined by the department from records required of pesticide dealers and retailers.

(2) The surcharge must be collected by the department on an annual calendar basis from the registrant of the herbicide and is due and payable within 30 days after notice of the amount has been given to the registrant.

(3) No registrant may be allowed to reregister a herbicide if he has failed to pay in full the surcharge on his product.

(4) The department may expend in a fiscal year not more than one-half of the annual proceeds of the surcharge as provided in [section 5(2) and (3)]. All remaining annual proceeds of the surcharge and any interest income collected must be deposited into the noxious weed management trust fund.

Section 4. **Acceptance and expenditure of gifts and other funds.** The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. Such funds may be expended to support any weed management project or may be deposited in the noxious weed management trust fund.

Section 5. **Administration and expenditure of funds.** (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2,500,000, except as provided by [section 6] in case of a noxious weed emergency. Once this amount is accumulated, any interest or revenue generated by the trust fund and by other funding measures provided by [this act] must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, so long as the principal of the trust fund remains at least $2,500,000.

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(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures must be on a cost-share basis with such organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs of collecting the surcharge imposed by [section 3], not to exceed 3% of the total surcharge proceeds; and

(e) administrative expenses incurred by the noxious weed management advisory council.

(4) In making such expenditures, the department must give preference to weed control districts and community groups.

(5) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.

Section 6. **Noxious weed emergency — expenditure authorized.** (1) If a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to $150,000 of the principal of the noxious weed trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species.

(2) If such expenditure causes the principal of the trust fund to fall below $2,500,000, it must be replenished by proceeds of the surcharge imposed in [section 3].

Section 7. **Penalty — enforcement.** (1) A person who violates any provision of [section 3] is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Upon conviction, the court shall order payment of any unpaid surcharge, together with such interest and costs as the court considers appropriate.

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(2) The county attorney of the county in which the offense occurred or the attorney general shall prosecute this action.

Section 8. **Rules.** The department may adopt rules necessary to implement [this act].

Section 9. **Noxious weed management advisory council.** (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of [this act].

(2) If appointed, the council must be composed of nine members, as follows:

(a) the director of the department of agriculture, who shall serve as chairman;

(b) one member representing livestock production;

(c) one member representing agriculture crop production;

(d) one member from a sportsman/wildlife group;

(e) one member who is a herbicide dealer or applicator;

(f) one member from a consumer group;

(g) one member representing biological research and control interests;

(h) one member from the Montana weed control association; and

(i) one at-large member from the agricultural community.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 578

[HB 621]

AN ACT REVISING THE LAW RELATING TO ASSET VALUATION AND BOND REQUIREMENTS FOR GRAIN DEALERS AND WAREHOUSEMEN; PERMITTING AN ALTERNATIVE TO THE BONDS; PROVIDING UNIFORMITY OF THE FINANCIAL EVALUATION PROVISIONS FOR COMMODITY DEALERS AND WAREHOUSEMEN, REQUIRING A 60-DAY NOTICE OF CANCELLATION; AMENDING SECTIONS 80-4-402, 80-4-504 THROUGH 80-4-506, 80-4-601, AND 80-4-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"**80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions apply:

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(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys or handles less than $10,000 worth of agricultural commodities in a licensing year;

(c) a person who is the producer of agricultural commodities that he actually plants, nurtures, and harvests; or

(d) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(5) "Credit sale contract" means a contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, or price-later contracts.

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

(9) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(10) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. 71 through 87) as that act reads on July 1, 1983.

(11) "Inspector" means any person so designated by the director to assist in the administration of parts 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

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(12) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results thereof, including the grade of the grain.

(13) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(14) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(15) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(16) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(17) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(18) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(19) "Receipt" means a warehouse receipt.

(20) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(21) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(22) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(23) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(24) "Warehouseman" means a person operating or controlling a public warehouse.

(25) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouseman, except scale weight tickets."

Section 2. Section 80-4-504, MCA, is amended to read:

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"80-4-504. Bond of applicant for license — additional bond — additional obligations. (1) Each applicant for a warehouseman's license shall file a bond *or its equivalent, as established by department rule,* with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of this section and 80-4-505.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouseman warrants an increase.

(3) The warehouseman may give a single bond to cover all warehouses operated by him.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof."

Section 3. Section 80-4-505, MCA, is amended to read:

"80-4-505. Amount of bond — cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouseman is also operating as a commodity dealer, he shall also provide a bond as prescribed in 80-4-604.

(3) If there occurs a deficiency in net assets as required under 80-4-506, there shall be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouseman bond shall run continuously with the warehouseman license until canceled by the bonding company. The aggregate liability of the surety may in no event exceed the sum of the bond.

(5) A *60-day* written notice must be given to the department by the bonding company before any bond is canceled*; however, such cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.*"

Section 4. Section 80-4-506, MCA, is amended to read:

"80-4-506. Net asset requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that his warehouse or warehouses can accommodate.

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(2) No person may be licensed as a warehouseman unless he has and maintains allowable net assets of at least $10,000.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouseman is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight which all such warehouses will accommodate must be considered in determining whether the warehouseman meets the net asset requirements specified in this section."

Section 5. Section 80-4-601, MCA, is amended to read:

"80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) A license application must include the following:

(a) the name of the applicant;

(b) the names of the officers and directors if the applicant is a corporation;

(c) the names of the partners if the applicant is a partnership;

(d) the location of the principal places of business;

(e) a sufficient and valid bond as specified in 80-4-604;

(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;

(g) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Assets must be shown at original cost less depreciation, *except that upon* written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal. *In determining total net assets, credit may be given for insurable property, such as buildings,*

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machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(h) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(4) In order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least $50,000 or maintain a bond in the amount of $2,000 for each $1,000 or fraction thereof of net assets deficiency. However, a minimum of $10,000 net assets is required by a commodity dealer to qualify for a license. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under this part.

(5) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."

Section 6. Section 80-4-604, MCA, is amended to read:

"**80-4-604. Bonding requirement amounts — cancellation.** (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond *or its equivalent, as established by department rule,* payable to the state. The aggregate annual liability of the surety may not exceed the sum of the bond.

(2) Unless set by department rule, the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The department may by rule require a greater percentage in each instance. The minimum amount of bond required by any commodity dealer is $20,000, and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least *60* days prior to the cancellation of the bond. The liability of the surety covers purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon *60* days' notice*; however, such cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.*"

Approved April 19, 1985.

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CHAPTER NO. 579

[HB 791]

AN ACT PROVIDING RESTRICTED REVIEW REQUIREMENTS FOR MINOR SUBDIVISIONS AND OTHER DIVISIONS OF LAND; AMENDING SECTIONS 76-3-505 AND 76-3-609, MCA

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of subdivisions and other divisions of land. *(1)* Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

(2) Local subdivision regulations must include procedures for review of those divisions of land consisting exclusively of parcels 20 acres or larger subject to this chapter. Rules governing review of these divisions of land shall be limited to a written determination of whether appropriate access and easements are properly provided."

Section 2. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions and other divisions of land. *(1)* Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(a) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

(b) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(c) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

(d) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

(2) (a) For divisions of land consisting exclusively of parcels 20 acres and larger, the governing body shall review the division of land within 35 days of the submission of an application for review. The governing body's review must be limited to a written determination that appropriate access and easements are properly provided. The review shall provide either:

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(i) that the access and easements are suitable for the purposes of providing appropriate services to the land; or

(ii) that the access and easements are not suitable for the purposes of providing appropriate services to the land, in which case the county, the school district or districts, and other authorities and districts in which the land is located will not provide services that involve use of the unsuitable access and easements. Such services include:

(A) fire protection;

(B) school busing;

(C) ambulance;

(D) snow removal; and

(E) similar services as determined by the governing body.

(b) The governing body shall deliver a copy of the determination of the review to the county clerk and recorder to be reflected on the certificate of survey or deed of conveyance of the land that was subject to review.

(c) The governing body may, upon application by a landowner, redetermine the suitability of access and easements. If the governing body determines that there has been a material change regarding access or easements and the change provides for suitable access and easements for services, it may determine that such land is now suitable as provided in subsection (2)(a)(i) and shall deliver a copy of such determination to the county clerk and recorder to be reflected on the certificate of survey or deed of conveyance.

(d) Requirements for holding a public hearing, preparing an environmental assessment, and finding that the division of land is in the public interest do not apply."

Approved April 19, 1985.

CHAPTER NO. 580

[HB 801]

AN ACT TO PROVIDE THAT YOUTH COURT COSTS BE ALLOCATED AMONG THE COUNTIES IN THE DISTRICT IN PROPORTION TO THE WORKLOAD OF THE COURT ATTRIBUTABLE TO EACH COUNTY; AMENDING SECTIONS 41-5-104 AND 41-5-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-104, MCA, is amended to read:

"41-5-104. County commissioners authorized to provide funds. *(1)* The county commissioners of all counties are hereby authorized,

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empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b)."

Section 2. Section 41-5-704, MCA, is amended to read:

"**41-5-704. Salary and expenses.** (1) A chief probation officer shall receive for his services a salary specified by the court, depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. In addition to such salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1 of that year an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 of each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the *cost allocation established under 41-5-104*, except where such officer is appointed for one county, such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503."

Section 3. **Applicability date.** This act is applicable to fiscal years following June 30, 1985. The youth court judge in each district shall calculate the cost allocation under the provisions of 41-5-104 based on the calendar year 1984 experience as soon as possible after [the effective date of this

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act] and forward it to the respective county commissioners for budgeting for fiscal year 1986.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 581

[HB 813]

AN ACT ALLOWING A CITY COUNCIL TO SET THE DATE FOR THE MONTHLY REPORT BY THE CLERK ON EXPENDITURES, LIABILITIES, AND APPROPRIATIONS; AMENDING SECTION 7-6-4241, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4241, MCA, is amended to read:

"7-6-4241. Clerk's report concerning expenditures, liabilities, and appropriations. *The* clerk shall submit to the council, *on a date set by the council,* a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. *The clerk* shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1985.

CHAPTER NO. 582

[HB 912]

AN ACT REVISING THE HARD-ROCK MINING IMPACT LAWS AND RELATED STATUTES; REDEFINING "LOCAL GOVERNMENT UNIT" AND "LARGE-SCALE MINERAL DEVELOPMENT"; MAKING CERTAIN CHANGES TO IMPACT PLAN SUBMISSION REQUIREMENTS; PROVIDING FOR TAX PREPAYMENT CREDITS AS SPECIFIED IN THE IMPACT PLAN; AMENDING SECTIONS 2-15-1822, 82-4-335, 82-4-339, 90-6-302, 90-6-307, 90-6-309, AND 90-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1822, MCA, is amended to read:

"2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

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(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, *when appointed to the board,* reside in an area impacted *or expected to be impacted* by large-scale mineral development;

(b) no more than three persons from the same congressional district;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) *a person who, when appointed to the board, is* an elected school district trustee;

(f) *a person who, when appointed to the board, is* an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a chairman from among its members."

Section 2. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of mining;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment; and

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(g) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

(2) Except as provided in subsection *(4)*, the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 3. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. *(1)* Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

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(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); and

(e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 4. Section 90-6-302, MCA, is amended to read:

"90-6-302. Definitions. In this part the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Local government unit" means a county, city, town, school district, or *any of the following independent special districts:*

(a) rural fire district;

(b) public hospital district;

(c) refuse disposal district;

(d) county water and sewer district;

(e) county water district; or

(f) county sewer district.

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(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility *for which a permit is applied for under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period.* A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303."

Section 5. Section 90-6-307, MCA, is amended to read:

"90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The impact plan shall include:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, *as identified in the impact plan,* either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. *The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.*

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to *the end* of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

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(4) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local governmental unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan shall be approved by the board.

(5) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. *The* local government unit and the developer *have 30 days, or a longer period if both the local government unit and the developer request an extension, to* resolve the objection. *If the objections are not resolved,* the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(6) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(7) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written *guarantee* that the developer will *meet the increased costs of public services and facilities as specified* in the approved impact plan and according to the time schedule contained in the approved impact plan.

(8) *The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.*

(9) The board shall notify the department of state lands of its receipt of the written *guarantee* of payment and of any failure of the developer to comply with this section.

(10) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact

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plan, the board shall, *if the hard-rock mining impact account is used to deliver payments to the local government unit,* pay to that local government unit in one sum or in parts the money from the hard-rock mining impact fund identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(11) If it is determined that an objection filed by an affected local government unit under subsection (4) *or 90-6-311(3)* is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part.

(12) Upon a determination by the department of state lands that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons, provided the revocation is requested by an affected local government unit and notice and opportunity for hearing are given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(13) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 6. Section 90-6-309, MCA, is amended to read:

"90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes *as specified in the impact plan.* This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of *45* mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may

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be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for *tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.*"

Section 7. Section 90-6-311, MCA, is amended to read:

"**90-6-311. Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions *specified in the plan.* Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least *75 persons, as determined under 90-6-302(4),* over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period,

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the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held."

Section 8. **Local government budget authority.** A local government unit may budget and expend payments received from a mineral developer under this part or part 4 of this chapter or pursuant to a plan approved under this part. If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payments.

Section 9. **Codification instruction.** Section 8 is intended to be codified as an integral part of Title 90, chapter 6, part 3, and the provisions of Title 90, chapter 6, part 3, apply to section 8.

Section 10. **Extension of authority.** Any existing authority of the hard-rock mining impact board, the department of state lands, and the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 11. **Applicability.** The provisions of this act apply to a mineral development for which a permit application is made under 82-4-335 on or after May 18, 1981, and prior to July 1, 1985, only if the mineral development is or will become a large-scale mineral development under 90-6-302(4), as that statute read prior to July 1, 1985.

Section 12. **Effective date.** This act is effective July 1, 1985.

Approved April 19, 1985.

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CHAPTER NO. 583

[SB 67]

AN ACT CLARIFYING THE TAXATION OF SEWAGE DISPOSAL SYSTEMS AND DOMESTIC WATER SUPPLY SYSTEMS OF ALL DWELLINGS; EXEMPTING DOWN-HOLE EQUIPMENT IN OIL AND GAS WELLS FROM PROPERTY SUBJECT TO TAXATION; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sewage disposal and water supply systems.** All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately.

Section 2. **Down-hole equipment in oil and gas wells exempt.** All down-hole equipment in oil and gas wells is exempt from taxation.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 6, and the provisions of Title 15 apply to sections 1 and 2.

Section 5. **Effective date — applicability.** This act is effective on passage and approval. Section 1 is applicable to taxable years beginning after December 31, 1985. Section 2 is applicable to taxable years beginning after December 31, 1984.

Section 6. **Coordination instruction.** If House Bill No. 693, including the section of that bill amending 15-6-207, is passed and approved, section 1 of this act, to be codified in Title 15, chapter 6, part 2, is void.

Approved April 22, 1985.

CHAPTER NO. 584

[SB 140]

AN ACT TO INCREASE THE AMOUNT OF SINGLE-PURPOSE COUNTY INDEBTEDNESS AUTHORIZED WITHOUT A VOTE FROM $150,000 TO $500,000; AMENDING SECTION 7-7-2101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an

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amount, including existing indebtedness, in the aggregate exceeding 23% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding *$500,000* without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) Nothing in this section shall apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 585

[HB 551]

AN ACT TO ESTABLISH A PROCEDURE FOR THE CREATION OF A NEW HIGH SCHOOL DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Procedure for creation of a new high school district — limitation for creation.** (1) To create a new high school district, a petition requesting the creation of a new high school district out of the territory of an existing high school district or districts must be addressed to the county superintendent and must:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 50 children who are at least 14 years old but less than 18 years old and who reside in the territory that would be included in the new district and who reside more than 20 miles over the shortest practical route from an operating high school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after the receipt of the petition; and

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(c) give notice of the place, date, and time of the hearing. Notices must be posted in the high school districts affected by the request in the manner prescribed in 20-20-204 for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition conclusively denies the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall by order deny the request. In the order creating the new district, the effective date for its creation must be the following July 1.

(4) The county superintendent's order may be appealed to the superintendent of public instruction within 30 days after the date of such order. An appeal must be in writing and be signed by not less than 10 residents of the proposed new district. The superintendent of public instruction shall:

(a) call a hearing on the appeal not less than 20 days or more than 30 days from receipt of the appeal;

(b) provide notice of the hearing in the manner prescribed in subsection (2)(c);

(c) consider the material presented at the county superintendent's hearing and pertinent other material; and

(d) render a decision on the creation of such new high school district. The decision is final.

(5) When a new high school district is created, the trustees of the elementary district in which the high school buildings are located are the trustees of the new district. A trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and is qualified.

(6) If the district does not open and operate a school within 1 year after the effective date of the creation of the new district, the order of the county superintendent or, if his order is appealed, the decision of the superintendent of public instruction creating a new district under this section is void and the new district ceases to exist. If the new district does not satisfy this requirement, the territory must be reincorporated in the district or districts in which it was located before the creation of the new district and the trustees are without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

(8) For the purposes of this section, the taxable value of the taxable property of the territory proposed to be included in the new district must be at least $500,000, unless 50,000 acres or more of such proposed new district are nontaxable Indian land.

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Section 2. **Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20 apply to section 1.

Approved April 22, 1985.

CHAPTER NO. 586

[HB 558]

AN ACT MAKING ANY FREEHOLDER ELIGIBLE TO APPROVE OR DISAPPROVE ANNEXATION OF PROPERTY BY A MUNICIPALITY PROVIDING SERVICES AND INCREASING THE TIME ALLOWED FOR RECEIVING WRITTEN EXPRESSIONS OF APPROVAL OR DISAPPROVAL; AMENDING SECTION 7-2-4710, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4710, MCA, is amended to read:

"7-2-4710. Protest. (1) For a period of *45* days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall receive expressions, in writing, of approval or disapproval of the proposed annexation from freeholders of the territory proposed to be annexed.

(2) If a majority of the said freeholders in writing disapprove the proposed annexation, no further proceedings under this part shall be had relating to the territory proposed to be annexed or any part thereof for a period of 1 year from the date of such disapproval."

Approved April 22, 1985.

CHAPTER NO. 587

[HB 574]

AN ACT TO ALLOW PUBLIC UTILITIES REGULATED BY THE PUBLIC SERVICE COMMISSION TO CORRECT CUSTOMER BILLING ERRORS BY BACK-BILLING NO MORE THAN 6 MONTHS FROM DISCOVERY OF THE ERROR; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Public utility errors in billing customers.** (1) For the purposes of this section:

(a) "public utility" does not include a municipal utility as defined in chapter 7 of this title;

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(b) a "customer billing error":

(i) includes any bill issued by the utility that is not designated as an estimated bill and that understates the amount owed by the customer;

(ii) includes a utility's failure to bill a customer for service provided that would be billed to the customer under the utility's normal billing practices;

(iii) excludes errors that result from the theft of service by the customer;

(iv) excludes errors involving a utility's industrial class customers; and

(v) excludes errors incurred in the billing of long distance services by a telecommunications utility.

(2) Whenever a public utility discovers a customer billing error, the utility may submit a bill to the customer for a period not to exceed the 6 months preceding the date the billing error is discovered.

Section 2. The commission may adopt rules to implement section 1.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 69, chapter 3, part 2, and the provisions of Title 69 apply to section 1.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 588

[HB 631]

AN ACT TO PROVIDE THAT AN ELECTOR MAY REQUEST TO VOTE BY PAPER BALLOT WHERE VOTING MACHINES ARE USED; TO PROVIDE THAT THE ELECTION ADMINISTRATOR MAY PROVIDE PAPER BALLOTS WHERE VOTING DEVICES ARE USED; TO DEFINE "VOTING MACHINE"; AMENDING SECTION 13-17-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-17-305, MCA, is amended to read:

"13-17-305. Request to use paper ballots. *(1) (a)* Where voting machines are used, an elector may request to vote by paper ballot instead of using the machine. The election judges shall provide the elector with a paper ballot when requested.

(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the

electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots. The printing of paper ballots provided pursuant to this subsection is an allowable election cost under the provisions of 13-1-302.

(2) Paper ballots shall be cast and counted by the election judges in the manner provided by law.

(3) For the purposes of this section, "voting machine" means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine."

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 22, 1985.

CHAPTER NO. 589

[HB 643]

AN ACT TO PROVIDE WHEN A LOCAL GOVERNMENT MAY AND MAY NOT PROHIBIT, REGISTER, TAX, LICENSE, OR REGULATE THE PURCHASE, SALE OR OTHER TRANSFER, OWNERSHIP, POSSESSION, DISCHARGE, TRANSPORTATION, OR UNCONCEALED CARRYING OF FIREARMS; REPEALING SECTION 7-32-4305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Right to possess firearms.** (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors. Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

Section 2. **Repealer.** Section 7-32-4305, MCA, is repealed.

Approved April 22, 1985.

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CHAPTER NO. 590

[HB 706]

AN ACT TO CLARIFY THE ARSON LAW; AMENDING SECTIONS 45-6-102 AND 45-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-102, MCA, is amended to read:

"45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, *including a firefighter responding to or at the scene of a fire or explosion*; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 2. Section 45-6-103, MCA, is amended to read:

"45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury, *including a firefighter responding to or at the scene of a fire or explosion.*

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Approved April 22, 1985.

CHAPTER NO. 591

[HB 750]

AN ACT TO GENERALLY REVISE AND CLARIFY THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-202, 75-20-303, 75-20-402, AND 75-20-501, MCA; REPEALING SECTION 75-20-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

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(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption."

Section 2. **Facilities subject to federal energy regulatory commission jurisdiction.** (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state recommendation with the commission.

(2) A person making application to the federal energy regulatory commission shall file with the department notice of and a copy of the federal application regarding any facility subject to subsection (1). The state recommendation must be based on its study of the federal application and other material gained through intervention in the federal proceeding.

(3) A person subject to the provisions of subsection (2) shall pay a fee to the department pursuant to 85-2-124 at the time an application is filed with the federal energy regulatory commission. The fee shall be used by the department to carry out its responsibilities under Title 85, chapter 2, and to develop a state recommendation and participate as a party in any necessary federal proceeding to assert the state recommendation. No fee prescribed by 75-20-215 may be assessed against a person paying a fee under this section.

(4) Any person who fails to file a timely notice of and a copy of the federal application with the department so as to prevent the department from timely compliance with this section and with the rules, statutes, or procedures governing the proceedings before the federal energy regulatory commission is subject to the provisions of 75-20-408.

Section 3. Section 75-20-303, MCA, is amended to read:

"**75-20-303. Opinion issued with decision — contents.** (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

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(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; *and*

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4), during which construction of the facility must be completed; *and*

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of 75-20-104(10) that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of 75-20-104(10) that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 4. **Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

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(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not to exceed 25% of the filing fee paid under 75-20-215.

Section 5. Section 75-20-402, MCA, is amended to read:

"75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection *(3)(b) or (3)(c)* of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes."

Section 6. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public. (1) Each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan shall be submitted by April 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities, a description of efforts by the utility or person to coordinate the plan with other utilities or persons so as to provide a coordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is

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proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment therefor to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan required to be completed under federal rural electrification requirements in lieu of the long-range plan required in subsection (1).

(5) No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department, *except for electric transmission lines of a design capacity of 230 kilovolts or less.*"

Section 7. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Repealer.** Section 75-20-214, MCA, is repealed.

Section 9. **Codification instruction.** Sections 2 and 5 are intended to be codified as an integral part of Title 75, chapter 20, part 2, and the provisions of Title 75, chapter 20, apply to sections 2 and 5.

Section 10. **Applicability.** Section 2 applies retroactively, within the meaning of 1-2-109, to occurrences and projects filed with the federal energy regulatory commission after January 1, 1981.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 592

[HB 768]

AN ACT EXEMPTING APARTMENTS AND OTHER PORTIONS OF BUILDINGS THAT ARE RENTED OR LEASED FROM REVIEW AS SUBDIVISIONS; EXEMPTING SUBDIVISIONS, INCLUDING CONDOMINIUMS, THAT WILL BE SERVED BY MUNICIPAL WATER AND SEWAGE FACILITIES IN CLASS 1 AND CLASS 2 MUNICIPALITIES FROM DEPARTMENT REVIEW; AMENDING SECTIONS 76-4-102, 76-4-103, 76-4-105, 76-4-111, 76-4-122 THROUGH 76-4-124, AND 76-4-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-102, MCA, is amended to read:

"**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

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(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(8) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of such a system.

(9) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(10) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

(11) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of such a system."

Section 2. Section 76-4-103, MCA, is amended to read:

"76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. *The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part."*

Section 3. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed $48 per parcel, for services rendered in the

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review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state special revenue fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving *preliminary plat approval* under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 4. Section 76-4-111, MCA, is amended to read:

"76-4-111. Exemption for certain condominiums. *(1)* Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or a public sewage disposal system is required as defined in this part."

Section 5. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department, and the department has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department approval is necessary; or

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(b) whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area *or a class 1 or class 2 municipality* and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 6. Section 76-4-123, MCA, is amended to read:

"76-4-123. Department review and approval required outside master planning areas and class 1 and class 2 municipalities. Outside master planning areas adopted pursuant to chapter 1 *and class 1 and class 2 municipalities as provided in 76-4-124*, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction."

Section 7. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master planning areas and class 1 and class 2 municipalities. (1) Within master planning areas adopted pursuant to chapter 1 *or within a class 1 or class 2 municipality as defined in 7-1-4111*, a subdivision, *including a development of condominiums*, is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, department approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in 76-4-122(2)(a)."

Section 8. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification to department that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving *preliminary plat approval* under the Montana Subdivision and Platting Act, send notice of certification to the department that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

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(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan, *when applicable,* if one has not yet been submitted to the department;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued."

Section 9. **Exclusion for certain subdivisions.** Subdivisions located within master planning areas and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127.

Section 10. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 11. **Codification instruction.** Section 9 is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to section 9.

Approved April 22, 1985.

CHAPTER NO. 593

[HB 774]

AN ACT REVISING THE METHOD FOR DETERMINING YEARS OF EMPLOYMENT FOR THE PURPOSE OF CALCULATING LONGEVITY ALLOWANCES AND VACATION LEAVE CREDITS FOR CERTAIN PUBLIC EMPLOYEES; AMENDING SECTIONS 2-18-304, 2-18-611, AND 2-18-612, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. *(1)* In addition to the compensation provided for in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the larger of $10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the

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base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following his date of employment in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school at a state institution or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 2. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment."

Section 3. Section 2-18-612, MCA, is amended to read:

"2-18-612. Rate earned. *(1)* Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which

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applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 4. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to service performed after July 31, 1984.

Approved April 22, 1985.

CHAPTER NO. 594

[HB 788]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO CONSOLIDATE IN A SINGLE, CENTRAL LOCATION THE OFFICES OF STATE AGENCIES LOCATED IN A CITY OTHER THAN HELENA WHENEVER CONSOLIDATION WOULD RESULT IN COST SAVINGS; AMENDING SECTION 2-17-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-101, MCA, is amended to read:

"2-17-101. Allocation of space. (1) The department of administration shall periodically survey the needs of state agencies other than the university system and shall assign space in state buildings to such agencies.

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No state agency shall lease, rent, or purchase property for quarters without prior approval of the department.

(2) *(a)* The location of the chambers for the house of representatives shall be determined in the sole discretion of the house of representatives. The location of the chambers of the senate shall be determined in the sole discretion of the senate.

(b) The department of administration, with the advice of the capitol building and planning committee, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(3) For state agencies located in a city other than Helena, the department of administration shall consolidate the offices of these agencies in a single, central location within the city whenever such consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. State retail liquor stores and liquor retail agencies are exempted from such consolidation."

Approved April 22, 1985.

CHAPTER NO. 595

[HB 817]

AN ACT TO PROVIDE HEALTH INSURANCE COVERAGE TO CERTAIN PERSONS INELIGIBLE FOR COVERAGE FROM TRADITIONAL PROVIDERS OF HEALTH CARE BENEFITS BY ESTABLISHING A MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; TO REQUIRE PARTICIPATION IN THE ASSOCIATION BY EACH HEALTH SERVICE CORPORATION, FRATERNAL BENEFIT SOCIETY, INSURANCE ARRANGEMENT, AND INSURER PROVIDING HEALTH CARE BENEFITS IN THIS STATE; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Association" means the comprehensive health association created by [section 3].

(2) "Association plan" means a policy of insurance coverage offered by the association through the lead carrier.

(3) "Association plan premium" means the charge determined pursuant to [section 8] for membership in the association plan based on the benefits provided in [section 6].

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(4) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan; and

(b) within 6 months prior to the date of application, has been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(5) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(6) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(7) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(8) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(9) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

(10) "Qualified plan" means those health benefit plans certified by the commissioner as providing the minimum benefits required by section 6 or the actuarial equivalent of those benefits.

(11) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

Section 2. **Duties of the commissioner — rules.** The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of [sections 1 through 13];

(2) supervise the creation of the association within the limits described in [section 3];

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

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(4) conduct periodic audits to assure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of [sections 1 through 13] so that the residents of this state may best avail themselves of the health care benefits provided by [sections 1 through 13].

Section 3. **Comprehensive health association — mandatory membership.** (1) There is established a nonprofit legal entity to be known as the Montana comprehensive health association with participating membership consisting of all insurers, insurance arrangements, societies, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

(d) establish administrative and accounting procedures for the operation of the association;

(e) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association; and

(f) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(e).

Section 4. **Association board of directors — organization.** (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the seven participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner; and

(b) a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume.

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(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them due to their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with [section 9].

Section 5. **Minimum benefits of association plan.** The association through the association plan shall offer a policy that provides at least the benefits of a qualified plan as required by [section 6].

Section 6. **Qualified plan — minimum benefits.** A plan of health coverage must be certified as a qualified plan if it otherwise meets the requirements of Title 33, chapters 15, 22 excepting part 7, and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 80% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but such maximums may not be less than $100,000.

(2) Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician or other licensed health care professional provided for in 33-22-111:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of medical equipment, which shall be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental; and

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(l) services of a licensed home health agency, up to a maximum of 180 visits per year.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) drugs requiring a physician's prescription;

(ii) services of a nursing home;

(iii) home and office calls, except as specifically provided in subsection (2);

(iv) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(v) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(vi) oral surgery, except as specifically provided in subsection (2);

(vii) that part of a charge for services or articles which exceeds the prevailing charge in the locality where the service is provided; or

(viii) care that is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition;

(iv) confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) organ transplants;

(vii) room and board for a nonemergency admission on Friday or Saturday;

(viii) pregnancy, except complications of pregnancy;

(ix) routine well baby care;

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(x) complications to a newborn, unless no other source of coverage is available;

(xi) sterilization or reversal of sterilization;

(xii) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xiii) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xiv) artificial insemination or treatment for infertility; or

(xv) breast augmentation or reduction.

Section 7. **Certification of qualified plan.** Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of [sections 1 through 13], the commissioner shall make a determination within 90 days as to whether the plan is qualified. If determined to be qualified, the plan of health coverage must be labeled as a "qualified plan" on the front of the policy.

Section 8. **Association plan premium.** The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of premiums may not be less than 150% or more than 400% of the average premium rates charged by the five largest insurers with the largest individual qualified plan of insurance in force in this state. The premium rates of the five insurers used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually by all insurers at the request of the commissioner. The information requested must include the number of qualified plans or actuarial equivalent plans offered by each insurer, the rates charged by the insurer for each type of plan offered by the insurer, and any other information the commissioner considers necessary. The association shall utilize generally acceptable actuarial principles and structurally compatible rates.

Section 9. **Operation of association plan.** (1) Upon acceptance by the lead carrier under [section 12], an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in [section 10].

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved

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for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of:

(a) the association member's total disability insurance premium received from or on behalf of Montana residents divided by;

(b) the total disability premium received by all association members from or on behalf of Montana residents, as determined by the commissioner.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall, each year the legislature meets in regular session, on or before January 15, report to the legislature the total amount of premium tax offset claimed by association members during the preceding biennium.

Section 10. **Administration of association plan — rules.** (1) Any member of the association may submit to the commissioner policies to be proposed to serve as the association plan. The commissioner shall prescribe by rule the time and manner of the submission.

(2) Upon the commissioner's approval of the policy forms and contracts submitted, the association shall select policies and contracts by a member or members of the association to be the association plan. The association shall select one lead carrier to issue the qualified plans. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members

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of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(3) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (2) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(4) The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(5) The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

(6) The lead carrier shall pay all claims pursuant to [sections 1 through 13] and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

(7) The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(8) The lead carrier is, when carrying out its duties under [sections 1 through 13], an independent contractor for the association and is individually liable for its actions, subject to the laws of this state.

Section 11. **Solicitation of eligible persons.** (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

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(2) The association shall devise and implement means of maintaining public awareness of [sections 1 through 13] and shall administer [sections 1 through 13] in a manner which facilitates public participation in the association plan.

(3) All licensed disability insurance agents may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an agent's referral fee of $25 to each licensed disability insurance agent who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid to the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance must notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it.

Section 12. **Enrollment by eligible person.** (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that he fulfills all of the elements of an eligible person, as defined in [section 1]; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. This subsection does not apply to a person who has had continuous coverage under an individual, family, or group policy during the year immediately preceding the filing of an application for nonelective procedures.

(5) A change of residence from Montana to another state immediately terminates eligibility for renewal of coverage under the association plan.

Section 13. **Liability of association membership.** No member of the association is liable for the actions of the association or its lead carrier.

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Section 14. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 15. **Codification instruction.** Sections 1 through 13 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 13.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Effective date.** (1) Except for section 5, this act is effective July 1, 1985.

(2) Section 5 is effective July 1, 1987.

Approved April 22, 1985.

CHAPTER NO. 596

[HB 859]

AN ACT TO ALLOW IN CERTAIN CASES THE TRANSFER OF RESPONSIBILITY FOR THE CONDUCT OF HEARINGS FOR WATER APPROPRIATION PERMITS FROM THE DEPARTMENT OF NATURAL RESOURCES TO A DISTRICT COURT; AMENDING SECTIONS 3-7-101, 3-7-223, 3-7-224, 3-7-501, 3-7-502, AND 85-2-309, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-101, MCA, is amended to read:

"**3-7-101. Water divisions.** To adjudicate existing water rights *and to conduct hearings in cases certified under 85-2-309,* water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge."

Section 2. Section 3-7-223, MCA, is amended to read:

"**3-7-223. Duties of the chief water judge.** The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

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(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

(c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed; and

(4) request and secure the transfer of water judges between divisions as needed."

Section 3. Section 3-7-224, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over *cases certified to the district court under 85-2-309 and* all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the *consideration of a matter within his jurisdiction,* the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities *including, but not limited to, requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as deemed necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).*"

Section 4. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of *cases certified to the court under 85-2-309 or of* existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation *of cases certified to the court under 85-2-309 or* of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning *cases certified to the court under 85-2-309 or concerning* the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

Section 5. Section 3-7-502, MCA, is amended to read:

"3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning *a case certified to the court under 85-2-309 or* the determination

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and interpretation of existing water rights, the question shall be settled by the water judges involved."

Section 6. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections — jurisdiction. *(1)* If the department determines that an objection to an application for a permit *or change approval under 85-2-402* states a valid objection, it shall hold a public hearing on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector, *unless the department certifies an issue to the district court for determination by a water judge under subsection (2).* The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(b) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 7. **Applicability.** This act applies to all permit applications and changes in appropriation right applications filed and pending with the department on the effective date of this act and upon which a proposal for a decision has not been issued by the department.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 597

[HB 894]

AN ACT PROVIDING THAT A WATER DISTRICT MAY EXPAND WHEN IT HAS EXCESS WATER CAPACITY IN THE SAME MANNER AS A SEWER DISTRICT MAY EXPAND WHEN IT HAS EXCESS SEWERAGE CAPACITY; REQUIRING CONSENT OF AFFECTED PROPERTY OWNERS; DELETING THE REQUIREMENT THAT SUCH EXPANSION MUST BE IN UNINCORPORATED AREAS; AMENDING SECTION 7-13-2341, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2341, MCA, is amended to read:

"7-13-2341. Addition of land to district. (1) Except as provided in subsection (5), any portion of any county, any municipality, or both, may

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be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, within 70 days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

(5) If the board of directors determines that a district has a *water facility or a* sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners *and with the written consent of all property owners to whom the service is to be extended*, expand the district to include land, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required."

Approved April 22, 1985.

CHAPTER NO. 598

[HB 896]

AN ACT REVISING THE DEFINITION OF PERMISSIBLE FIREWORKS; PROVIDING FOR FIREWORKS WHOLESALER PERMITS; FURTHER REGULATING THE USE AND SALE OF FIREWORKS; AMENDING SECTIONS 50-37-103 THROUGH 50-37-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-103, MCA, is amended to read:

"50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

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(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks *without a current fireworks wholesaler permit or in violation of* 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 by mail order solicitation.

(5) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 within 300 feet of a hospital or church.

(6) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics, *fireworks as defined in 50-37-101, or permissible fireworks as enumerated in 50-37-105:*

(a) within the exterior boundaries of a state forest, state park, or state recreation area;

(b) within 100 feet of a fireworks retail sales location;

(c) from, inside, or toward a motor vehicle; or

(d) in the vicinity of another person or group of people or any animal in a manner likely to expose them to the risk of injury."

Section 2. Section 50-37-104, MCA, is amended to read:

"50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit. *(1) Subject to subsection (2) it* is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. *At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.*

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler must obtain a fireworks wholesaler permit from the department of commerce.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of commerce, which must be set by the department of commerce commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that he:

(i) is at least 18 years of age;

(ii) is of good moral character; and

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(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of commerce shall adopt rules implementing this section."

Section 3. Section 50-37-105, MCA, is amended to read:

"50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, and bottle rockets, include and are limited to *those that meet the definition of "common fireworks" as set forth in the U.S. department of transportation's Hazardous Materials Regulations, 49 C.F.R., parts 173.88 and 173.100, as they read on January 1, 1985, and that comply with the construction, chemical composition, and labeling regulations of the U.S. consumer product safety commission, as set forth in 16 C.F.R., part 1507, as it reads on January 1, 1985."*

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 599

[HB 911]

AN ACT PROVIDING SPECIFIC REQUIREMENTS FOR POSTING OF LAND FOR THE PURPOSES OF THE CRIMINAL TRESPASS LAW; EXPANDING THE AUTHORITY OF WARDENS TO ENFORCE THE CRIMINAL MISCHIEF, CRIMINAL TRESPASS, AND LITTER LAWS ON PRIVATE LANDS BEING USED FOR RECREATIONAL PURPOSES; AMENDING SECTIONS 45-6-201 AND 87-1-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. *Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. Such privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.*

(2) *To be effective under this section, the notice provided for in subsection (1) must satisfy the following requirements:*

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

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(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) If property has been posted in substantial compliance with subsection (2), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(4) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning such licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section.

(5) For purposes of this section, "land" means land as defined in 70-15-102.

(6) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Section 2. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property — wardens as ex officio fire wardens. *(1)* It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2) on private lands *being used for recreational purposes* and to act as ex officio fire wardens as provided by 77-5-104.

(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 22, 1985.

CHAPTER NO. 600

[HB 460]

AN ACT PROVIDING FOR THE DEPARTMENT OF COMMERCE TO RECOVER THE COSTS OF EXAMINATION OF STATE-CHARTERED FINANCIAL INSTITUTIONS; PROVIDING FOR RULEMAKING AUTHORITY; PROVIDING THAT ALL FUNDS COLLECTED AS A RESULT OF ASSESSMENTS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 31-1-221, 32-1-213, 32-1-215, 32-2-102, 32-2-110, 32-3-201, 32-5-201, AND 32-5-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-213, MCA, is amended to read:

"32-1-213. Payments to be made by banks, investment companies, and trust companies. (1) On or before January 31 and July 31 of

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each year, each bank, trust company, or investment company under the supervision of the department shall pay to the department a semiannual assessment fee. The fees shall be set to recover *all* of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department shall establish such assessment fee by rule on or before June 1 of each year. The funds so collected shall be deposited in the *state special revenue fund for the use of the department in its examination function.*

(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the *state special revenue fund for the use of the department in its examination function.*"

Section 2. Section 32-1-215, MCA, is amended to read:

"**32-1-215. Special examinations and fees.** Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at the rate of $100 a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the *state special revenue fund for the use of the department in its examination function.*"

Section 3. Section 32-2-102, MCA, is amended to read:

"**32-2-102. Fees paid into state treasury.** All fees provided for in this chapter and paid to the department or secretary of state shall be by them turned in to the state treasury for the credit of the state *special revenue fund for the use of the department in its examination function.*"

Section 4. Section 32-2-110, MCA, is amended to read:

"**32-2-110. Payments to be made by building and loan associations.** For the credit of the state *special revenue fund for the use of the department in its examination function*, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee *established by the department by rule on or before June 1 of each year. The fees must be set to recover all of the costs of the program of supervision of building and loan associations.*"

Section 5. Section 32-3-201, MCA, is amended to read:

"**32-3-201. Director of the department of commerce.** (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this chapter.

(2) The director may prescribe rules for the administration of this chapter and may establish chartering, supervisory, and examination fees.

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Fees so collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall, from time to time, issue rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk."

Section 6. Section 32-5-201, MCA, is amended to read:

"32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid by the department *into the state special revenue fund for the use of the department in its supervision function.*

(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104."

Section 7. Section 32-5-403, MCA, is amended to read:

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"**32-5-403. Annual examinations — cost.** (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at *a rate to be established by the department by rule. Such fees shall be established to recover all of the costs of the supervision program of the department.* Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked."

Section 8. Section 31-1-221, MCA, is amended to read:

"**31-1-221. Licensing of sales finance companies required.** (1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this part, except that no bank, trust company, or savings and loan association authorized to do business in this state shall be required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the department. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information as to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $100 for each place of business of the licensee in this state.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of such application and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this part for a period which shall expire December 31 next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this part under any other name.

(6) Fees collected under this chapter shall be deposited in the state special revenue fund for the use of the department in its supervision function."

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Section 9. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1985.

CHAPTER NO. 601

[HB 529]

AN ACT DELINEATING AND EXPANDING THE CAUSES OF ACTION AND REMEDIES AVAILABLE TO AN INJURED EMPLOYEE OF AN UNINSURED EMPLOYER OR TO THE EMPLOYEE'S BENEFICIARIES; AMENDING SECTIONS 39-71-504, 39-71-508 THROUGH 39-71-510, AND 39-71-2905, MCA.

WHEREAS, it is the public policy of the State of Montana to ensure that every employee who is required to be covered under the state's workers' compensation laws, or his beneficiaries, receive, in the event of compensable injury or death, the monetary compensation to which they are entitled or are adjudged to be entitled under Title 39, chapter 71, part 7; and

WHEREAS, under current laws, an employee of an uninsured employer or the employee's beneficiaries are significantly impeded in the ability to recover full or partial compensation for a compensable injury or death; and

WHEREAS, this situation exists because of all of the following factors:

(1) There is a significant number of uninsured employers in Montana.

(2) The uninsured employers' fund is, for all practical purposes, insolvent.

(3) Existing remedies for an injured employee or his beneficiaries are inadequate, particularly when the negligence of the employer is not or cannot be proven to be the proximate cause of the injury or death.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund — option for agreement between division and injured employee. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of

the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) *(a)* The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection *(2)(a)* may not exceed *$50,000.*

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or [section 6].

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The division may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the division from the uninsured employer pursuant to subsection (2)(a)."

Section 2. Section 39-71-508, MCA, is amended to read:

"**39-71-508. Coordination of remedies.** An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may *pursue all remedies concurrently, including but not limited to;*

(1) a claim for benefits from the uninsured employers' fund*;*

(2) a damage action against the employer *in accordance with 39-71-509;*

(3) an independent action against an employer as provided in [section 6]; or

(4) any other civil remedy provided by law."

Section 3. **Setoffs to claim against fund.** A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

Section 4. Section 39-71-510, MCA, is amended to read:

"**39-71-510. Limitation on benefit entitlement under fund.** Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who *pursue a claim for* benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from

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the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 5. Section 39-71-509, MCA, is amended to read:

"39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances."

Section 6. **Independent cause of action.** (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

Section 7. **District court venue for independent cause of action.** An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to [section 6] must bring such action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership.

Section 8. **Requirement to serve papers.** In pursuing remedies under this part, an injured employee or his beneficiaries shall serve all pleadings

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and all other litigation papers on the division and the uninsured employer, regardless of whether the division or the uninsured employer is a party to the particular action to which the papers relate.

Section 9. **Setoffs.** Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or [section 6] may be offset by the uninsured employer against his remaining liability under those sections.

Section 10. **Settlement.** The division, the uninsured employer, the injured employee or his beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under this part of any or all of the parties. Such a settlement is subject to division approval in accordance with 39-71-741.

Section 11. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, *except as provided in [section 7].* The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71."

Section 12. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 13. **Codification instruction.** Sections 3 and 6 through 10 are intended to be codified as an integral part of Title 39, chapter 71, part 5.

Approved April 23, 1985.

CHAPTER NO. 602

[HB 563]

AN ACT GENERALLY REVISING THE LAWS RELATING TO COSMETOLOGY; PROVIDING FOR THE LICENSURE AND REGULATION OF MANICURISTS, MANICURING SHOPS, AND SCHOOLS OF MANICURING; AMENDING SECTIONS 37-31-101, 37-31-203, 37-31-301 THROUGH 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, AND 37-31-331, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-101, MCA, is amended to read:

"37-31-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

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(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing", *"manicuring"*, and "beauty culture" and performed in so-called hairdressing and beauty shops or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, *feet*, or hands. The practice and teaching of cosmetology shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop" means premises, a building, or part of a building in which the art of manicuring is practiced."

Section 2. Section 37-31-203, MCA, is amended to read:

"37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice *cosmetology or manicuring* or *to* teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology *and schools of manicuring* for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 3. Section 37-31-301, MCA, is amended to read:

"37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology *or school of manicuring*;

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(c) manage or operate a cosmetology shop, *manicuring shop,* or beauty parlor;

(d) teach in a school of cosmetology *or school of manicuring*;

(e) practice manicuring *for compensation*;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist *or manicurist*;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) for any person who owns, manages, or controls a manicuring shop to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter."

Section 4. Section 37-31-302, MCA, is amended to read:

"37-31-302. License required to practice, teach, or operate shop or school. (1) No person may practice or teach cosmetology *or practice or teach manicuring* without a license.

(2) No place may be used or maintained for the teaching of cosmetology *or manicuring* for compensation except under a certificate of registration.

(3) No person may operate *or* manage a beauty shop or *a manicuring shop* or practice *cosmetology or manicuring* without a manager-operator license.

(4) No person may operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(6) No license may be issued until the inspection fees required in 37-31-312 have been paid."

Section 5. Section 37-31-303, MCA, is amended to read:

"37-31-303. Application for license to practice or teach. *An* applicant *for a license to practice or teach cosmetology or for a license to practice manicuring* must qualify by filing an application prescribed by the

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board and by taking and passing the examination prescribed by the board and given by the department, subject to 37-1-101. The license must be renewed annually under 37-31-322."

Section 6. Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before *a person* may practice cosmetology, *he* must obtain a license *to practice cosmetology* from the department. *Before a person may practice manicuring, he must obtain a license to practice manicuring from the department unless he is licensed to practice cosmetology.*

(2) *(a)* To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age, a graduate of the 8th grade, and of good moral character. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board of public education.

(b) A person qualified *under subsection (2)(a)* must file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant must be not less than 18 years of age, be of good moral character, possess a high school diploma, an equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a postsecondary vocational-technical center program, and have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must file with the department a written application to take the examination and deposit with the department the required examination fee."

Section 7. Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. *(1)* Before *a person* may *teach manicuring to persons seeking only to be licensed to practice manicuring or teach cosmetology, he must obtain from the department a license to teach cosmetology.*

(2) To be eligible to take an examination to obtain a license *to teach* cosmetology, *a person* must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 500 hours of student teacher training; or

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(ii) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination."

Section 8. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice *cosmetology or manicuring or to teach cosmetology* shall be held at *places and times* specified by the board. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass an examination *for a license to practice cosmetology* may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring must meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology must wait 1 year before reapplying to take the examination. Upon reapplying, the applicant must provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology *or manicuring* by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a beauty school *or manicuring school*, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 9. Section 37-31-311, MCA, is amended to read:

"37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation *or for the purpose of teaching manicuring for compensation* unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the

board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) No school for teaching manicuring may be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It must possess apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It must maintain a school term and a course of practical training and technical instruction as prescribed by the board.

(c) No owner or person in charge of a school of manicuring may permit a person to sleep in or use for residential purposes, or any other purpose that would tend to make the room unsanitary, a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration *for schools of cosmetology and schools of manicuring* may be refused, revoked, or suspended, as provided in 37-31-331.

(5) No teacher or student teacher may be permitted to practice cosmetology *or manicuring* on the public in a school *of cosmetology or a school of manicuring.* A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology *and schools of manicuring.*

(7) The board shall require the person, firm, partnership. or corporation operating a school *of cosmetology or a school of manicuring* to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(8) No professional beauty shop *or manicuring shop* may be operated in connection with a school of cosmetology *or school of manicuring.*

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(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology."

Section 10. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor, *manicuring shop,* school of cosmetology, *or school of manicuring* during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment *or manicuring shop* must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment *or manicuring shop,* upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment *or manicuring shop* to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each *cosmetological* establishment *and manicuring shop* in the state."

Section 11. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses *to teach cosmetology* must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a license *to teach cosmetology* but not actively engaged either full-time or part-time in teaching cosmetology *or manicuring* during the preceding year may renew the license by paying the required fee. A person holding a license *to teach cosmetology* but not actively engaged in teaching cosmetology *or manicuring* either full-time or part-time for the

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preceding year or longer and wishing to resume active teaching of cosmetology *or manicuring* must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a license *to teach cosmetology* and not actively engaged either full-time or part-time in teaching cosmetology *or manicuring* from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

Section 12. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetological establishment, *manicuring shop,* school of cosmetology, *or school of manicuring* to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of cosmetological establishments, *manicuring shops,* schools of cosmetology, *or schools of manicuring;*

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 13. **Extension of authority.** Any existing authority of the board of cosmetologists to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 14. **Effective date.** This act is effective January 1, 1986.

Approved April 23, 1985.

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CHAPTER NO. 603

[HB 579]

AN ACT AMENDING SECTION 53-21-111, MCA, TO REQUIRE THAT A PERSON REQUESTING VOLUNTARY ADMISSION TO THE MONTANA STATE HOSPITAL RECEIVE CONFIRMATION FROM A COMMUNITY MENTAL HEALTH CENTER THAT ADEQUATE TREATMENT IS UNAVAILABLE IN THE COMMUNITY AND TO REMOVE REFERENCE TO FINANCIAL ABILITY TO PAY FOR SERVICES IN THE COMMUNITY; AND PROVIDING RULE-MAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-111, MCA, is amended to read:

"53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release, shall be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. *The professional person must then obtain confirmation from a community mental health center* that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. *The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from a community mental health center as required in this section.*

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Approved April 23, 1985.

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CHAPTER NO. 604

[HB 596]

AN ACT TO EXEMPT FROM CORPORATION LICENSE TAX PROVISIONS THOSE FARMERS' MARKET ASSOCIATIONS ORGANIZED FOR THE SOLE PURPOSE OF PROVIDING A RETAIL OUTLET FOR VEGETABLES, HANDICRAFTS, AND OTHER PRODUCTS PRODUCED BY THE SELLER; AMENDING SECTION 15-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

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(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of such corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit and no part of the net income of which inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 shall be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1984.

Approved April 23, 1985.

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CHAPTER NO. 605

[HB 646]

AN ACT DEFINING "ORGANIC FOOD" AND REQUIRING ACCURATE LABELING OF ORGANIC FOOD; PROVIDING FOR REMEDIES; AMENDING SECTIONS 50-31-103 AND 50-31-203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Beef patty mix" means "hamburger" or "ground beef" to which has been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) "Color" includes black, white, and intermediate grays.

(4) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(5) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(1)(c) or section 503(b)(1) or 506 of the federal act;

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(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(6) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(7) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(8) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(9) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(11) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(12) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

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(13) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(14) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(15) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(16) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are three grades of hamburger or ground beef:

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

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(17) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(23) "Organic food" means food that conforms to the definition in [section 4].

(24) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(25) "Person" includes an individual, partnership, corporation, and association.

(26) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

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(27) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(28) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(29) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(30) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(31) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public with or without charge.

(32) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

(33) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes."

Section 2. Section 50-31-203, MCA, is amended to read:

"50-31-203. When food misbranded. A food shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other

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words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to such definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) it is not subject to the provisions of subsection (7) of this section unless it bears labeling clearly giving:

(a) the common or usual name of the food, if any there be; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of subsection (9)(b) is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department; and provided further that the requirements of subsection (9)(b) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; provided that the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as

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defined in 81-22-101 shall be exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in [section 4]."

Section 3. **Short title.** [Sections 3 through 6] may be cited as the "Montana Truth in Labeling Act for Organic Foods".

Section 4. **Organic food defined.** Organic food is food that:

(1) was produced, harvested, cleaned, stored, distributed, processed, and packaged without application of synthetically compounded fertilizers, pesticides, herbicides, fungicides, growth regulators, aromatic petroleum solvents, diesel and other petroleum fractions, or other synthetically compounded substances, and without being preserved by irradiation;

(2) was produced, harvested, cleaned, stored, distributed, processed, and packaged with application of only microorganisms, microbiological products, and materials consisting of or derived or extracted solely from plant, animal, or mineral-bearing rock substances, including but not limited to Bordeaux mixtures and trace elements, soluble kelp, lime, sulfur, gypsum, dormant oils, summer oils, fish emulsion, soap, green manure, compost, and animal manures, and ascorbic acid, sodium ascorbate, calcium ascorbate, and citric acid used in processing;

(3) contains no added coloring or synthetically compounded material;

(4) does not contain pesticide residue in excess of 10% of the level regarded as safe by the U.S. food and drug administration;

(5) in the case of perennial crops, was grown in fields to which no synthetically compounded substances were applied for 24 months before the appearance of flower buds and throughout the entire growing and harvesting season of the crop;

(6) in the case of annual crops and 2-year crops, was grown in fields to which no synthetically compounded substances or growth regulators were applied for 24 months before planting or transplanting and throughout the entire growing and harvesting season of the crop;

(7) in the case of meat, poultry, or fish, was raised for at least the final 60% of its life:

(a) on food produced in conformity with subsection (5) or (6);

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(b) without the use of any chemical or drug to stimulate or regulate growth or tenderness; and

(c) without any drug or antibiotic administered or introduced by injection or ingestion, except for treatment of a specific disease or malady not less than 90 days before the slaughter of such animal, bird, or fish; and

(8) in the case of milk or eggs, was produced by animals raised in accordance with subsection (7) except that no chemical, drug, or antibiotic was administered or introduced less than 30 days before the production of such milk or eggs.

Section 5. **Requirements for labeling.** (1) No claim or implication may be made in the labeling, advertising, or promotion of raw or processed food products, meat, fish, poultry, milk, eggs, or seeds that the food is organic, organically grown, naturally grown, ecologically grown, or biologically grown unless it conforms to the definition set forth in [section 4].

(2) Packaged organic food must be labeled as follows, or with substantially similar language: "ORGANIC FOOD AS DEFINED IN MONTANA LAW ([section 4], MCA)".

Section 6. **Injunctive relief.** (1) In addition to the remedies provided in 50-31-509, any person may bring an action in district court pursuant to this section, and the district court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of [section 5]. The court may award attorney fees to the prevailing party in the action.

(2) The prohibition provided in [section 5] does not apply to any wholesale or retail distributor who in good faith makes the same representations on a package or label or in advertising or promotion as have been made by the manufacturer, distributor, or other person providing the food to that wholesale or retail distributor.

Section 7. **Codification instruction.** Sections 3 through 6 are intended to be codified as an integral part of Title 50, chapter 31, and the provisions of Title 50, chapter 31, parts 1, 2, and 5, except 50-31-506, apply to sections 3 through 6.

Section 8. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Effective date — applicability.** This act is effective January 1, 1986, and applies to food products harvested or manufactured on or after January 1, 1986.

Approved April 23, 1985.

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CHAPTER NO. 606

[HB 700]

AN ACT REGULATING PLEA BARGAIN AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-202, 46-12-204, AND 46-13-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."

Section 2. Section 46-12-204, MCA, is amended to read:

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"46-12-204. The plea — plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and

(iv) that the judge may impose any sentence allowed by law."

Section 3. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order a complaint, information, or indictment to be dismissed; *however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown and the* reasons *for* the dismissal *are* set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony."

Approved April 23, 1985.

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CHAPTER NO. 607

[HB 716]

AN ACT GENERALLY REVISING COUNTY WEED CONTROL LAWS; AMENDING SECTIONS 7-3-4453, 7-14-2131, 7-14-2132, 7-22-2101 THROUGH 7-22-2105, 7-22-2107, 7-22-2108, 7-22-2121, 7-22-2123, 7-22-2124, 7-22-2126, 7-22-2141 THROUGH 7-22-2146, 7-22-2148, 7-22-2150, 7-22-2215, 7-22-4101, AND 77-6-114, MCA; AND REPEALING SECTIONS 7-22-2122, 7-22-2125, 7-22-2127, AND 7-22-2147, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "District" means *a* weed *management* district *organized under 7-22-2102.*

(5) (a) "Noxious weeds" or "weeds" means *any exotic plant species established or that may be introduced in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses and which is designated:*

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(6) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, or right-of-way for a canal or lateral.

(7) "Supervisor" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

(8) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 2. Section 7-22-2102, MCA, is amended to read:

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"**7-22-2102. Weed management districts established.** A weed *management* district shall be formed in every county of this state and shall include all the land within the boundaries of the county, *except that a weed management district may include more than one county through agreement of the commissioners of the affected counties.*"

Section 3. Section 7-22-2103, MCA, is amended to read:

"**7-22-2103. District weed board.** (1) The commissioners shall appoint a *district* weed board consisting of three or five members, and:

(a) if a three-member board, two members shall be rural agricultural landowners within the *district* and one shall be a *member-at-large*; or

(b) if a five-member board, three members shall be rural agricultural landowners within the *district*, one member shall be a resident of a city or town within the *district*, and one shall be a *member-at-large.*

(2) The county extension agent in each county *and other interested individuals may be appointed to serve as nonvoting members* of that *district's* weed board.

(3) The *board members* are public officers."

Section 4. Section 7-22-2104, MCA, is amended to read:

"**7-22-2104. Term of office.** (1) Except as provided in subsection (2), a member of a *district* weed board serves a term of 3 years and until the qualification of his successor. *The term of office begins January 1.*

(2) When a three-member weed board is established, the initial board members serve terms of 1, 2, and 3 years, respectively, as designated by the commissioners. When a five-member weed board is established, two of the initial members serve terms of 1 year, two serve terms of 2 years, and one serves a term of 3 years. After expiration of an initial term of office, the successor serves a 3-year term as provided in subsection (1)."

Section 5. Section 7-22-2105, MCA, is amended to read:

"**7-22-2105. Organization of district weed board and compensation.** (1) The board shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board.

(2) Salary, per diem, and mileage of such *board members* shall be set by resolution of the commissioners.

(3) A majority of the board constitutes a quorum for the conduct of business."

Section 6. **Powers and duties of board.** (1) The board may:

(a) employ a supervisor and other employees as necessary and provide for their compensation;

(b) purchase such chemicals, materials, and equipment and pay other operational costs as it determines necessary for implementing an effective weed management program. Such costs must be paid from the noxious weed fund.

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(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for such chemicals, materials, or equipment must be paid by such person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if such plant species spreads or threatens to spread into the state; and

(e) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed program;

(b) establish management criteria for noxious weeds on all land within the district;

(c) make all reasonable efforts to develop and implement a noxious weed program covering all land within the district owned or administered by a federal agency.

Section 7. Section 7-22-2107, MCA, is amended to read:

"7-22-2107. Unlawful to permit noxious weeds to propagate. It *is* unlawful *for any person* to permit any noxious weed to *propagate or* go to seed on *his land, except that any person who adheres to the noxious weed management program of his district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.*"

Section 8. Section 7-22-2108, MCA, is amended to read:

"7-22-2108. Violations. (1) Any person who in any manner interferes with the *board or its authorized agent* in carrying out the provisions of this part or who refuses to obey an order *or notice* of *the board* is guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100 *for the first offense and not less than $100 or more than $200 for each subsequent offense.*

(2) All fines, bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of a fund to be known as the noxious weed fund."

Section 9. Section 7-22-2121, MCA, is amended to read:

"7-22-2121. Weed management program. *(1) The noxious weed management program must be based on a plan approved by the board.*

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations; and

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(c) estimate the personnel, operations, and equipment costs of the proposed program.

(3) The *board* shall *provide for the management of* noxious weeds on all *land or rights-of-way owned or controlled by a county or municipality* within the confines of the district. *It* shall take particular precautions *while managing* the noxious weeds *to preserve* beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include *cultural,* chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in such zones may be more or less stringent than the general management criteria for the district."

Section 10. **Cooperative agreements.** (1) Any state agency controlling land within a district, including the department of highways; the department of state lands; the department of fish, wildlife, and parks; the department of institutions; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

Section 11. **Revegetation of rights-of-way and disturbed areas.** (1) Any state agency or local government unit approving a mine, major facility, transmission line, solid waste facility, highway, subdivision, or any other development resulting in significant disturbance of land within a district shall notify the board.

(2) Whenever any person or agency disturbs vegetation on an easement or right-of-way within a district by construction of a road, irrigation or drainage ditch, pipeline, transmission line, or other development, the board shall require that the disturbed areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency disturbing the land shall submit to the board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district

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weed management plan. Upon approval by the board, the revegetation plan must be signed by the chairman of the board and the person or agency responsible for the disturbance and constitutes a binding agreement between the board and such person or agency.

Section 12. **Voluntary agreements for control of noxious weeds along roads.** (1) Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through his land. The supervisor may draft such an agreement upon the request of and in cooperation with the person; however, the agreement must, in the board's judgment, provide for effective weed management. The weed management agreement must be signed by the person and, upon approval of the board, by the chairman. An agreement involving a state highway right-of-way must also be signed by a representative of the department of highways.

(2) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of highways for any injuries or losses suffered by the person in managing noxious weeds on the state or county highway right-of-way. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the person signing the agreement. If the board later finds that the person has failed to adhere to the agreement, the board shall issue an order informing the person that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person complies with the provisions of the agreement within a specified time period.

Section 13. Section 7-22-2123, MCA, is amended to read:

"7-22-2123. Procedure in case of noncompliance. *(1)* Where complaint has been made *or the board has* reason to believe that noxious weeds described in this part are present upon *a person's land* within the district in violation of the law, *that person must be notified by mail or telephone of the complaint and the board may request inspection of such land. The board or its authorized agent and the landowner or his representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If after reasonable effort the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.*

(2) If *noxious* weeds are found, the *board or supervisor* shall *notify the person or his representative and seek voluntary compliance with the district weed control program. If voluntary compliance is not possible, notice of noncompliance must be sent to the person by certified mail.*

(3) The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the district's management criteria; and

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(d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated.

(4) A person is considered in compliance if he submits and the board accepts a proposal to undertake specified control measures and is in compliance for so long as he performs according to the terms of the proposal. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(5) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and his neighbors, practical biological and environmental limitations, and alternative control methods to be used."

Section 14. Section 7-22-2124, MCA, is amended to read:

"**7-22-2124. Destruction of weeds by board.** (1) If *corrective action is not taken and no proposal is made and accepted* within the time specified in the notice, the *board may* forthwith *enter upon the person's land and* institute *appropriate* control measures. *In such case the board shall submit a bill to the person, itemizing man-hours of labor, material, and equipment time, together with a penalty not exceeding 10% of the total cost incurred. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent.*

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder."

Section 15. **Administrative hearing — appeals.** (1) A person adversely affected by any notice, action, or order of the board may request an administrative hearing before the board. The board shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The board shall make a record of the proceeding and enter its order and findings within 7 days after the hearing.

(2) An order of the board may be appealed to the commissioners within 30 days from the time the order is entered. The commissioners shall hear such appeal within 30 days after the notice of appeal and shall render their order and findings within 7 days after such hearing. Participants may be represented by legal counsel.

(3) Within 30 days after the commissioners render their order and findings, the person adversely affected may file a petition in district court requesting that the order and findings of the commissioners be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

Section 16. Section 7-22-2126, MCA, is amended to read:

"**7-22-2126. Embargo.** *The board may establish voluntary embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.*"

Section 17. Section 7-22-2141, MCA, is amended to read:

"**7-22-2141. Noxious weed fund authorized.** (1) The commissioners of *each* county in this state *shall* create a noxious weed *management* fund, to be designated the "noxious weed fund".

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(2) This fund shall be kept separate and distinct by the county treasurer."

Section 18. Section 7-22-2142, MCA, is amended to read:

"**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may create the noxious weed fund by:

(a) appropriating money from the general fund of the county;

(b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in such county; *and*

(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.

(2) The proceeds of the tax shall be used solely for the purpose of *managing* noxious weeds in said county and shall be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for reuse within *that* fiscal year *or any subsequent year.*

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund."

Section 19. Section 7-22-2143, MCA, is amended to read:

"**7-22-2143. Determination of cost of weed control program.** The commissioners shall determine and fix the cost of the control of noxious weeds in *the district,* whether the same be performed by the individual landowners or by the *board.*"

Section 20. Section 7-22-2144, MCA, is amended to read:

"**7-22-2144. Payment of cost of weed control program.** The total cost of such control shall be paid from the noxious weed fund. The cost of controlling such weeds growing along the right-of-way of a state or federal highway shall, upon the presentation by the *board* of a verified account of the expenses incurred, be paid from the state highway fund *in compliance with 7-14-2132 and any agreement between the board and the department of highways.* Costs attributed to other lands within the district shall be assessed to and collected from the *responsible person* as set forth in 7-22-2107."

Section 21. Section 7-22-2145, MCA, is amended to read:

"**7-22-2145. Expenditures from noxious weed fund.** (1) The noxious weed fund shall be expended by the commissioners at such time and in such manner as is deemed best by *the board* to secure the control of noxious weeds.

(2) Warrants upon such fund shall be drawn by the *board.* No warrants shall be drawn except upon claims duly itemized by the claimant, except

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payroll claims which shall be itemized and certified by the *board*, and each such claim shall be presented to the commissioners for approval before the warrant therefor shall be countersigned by the commissioners."

Section 22. Section 7-22-2146, MCA, is amended to read:

"7-22-2146. Financial assistance to persons responsible for weed control. *(1) The commissioners, upon recommendation of the board, may establish cost-share programs with any person, specifying costs that may be paid from the noxious weed fund and costs that must be paid by the person. Cost-share programs may be established for special projects and for established management zones.*

(2) (a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2123 or otherwise, or under any cost-share program entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing man-hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount thereof, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148."

Section 23. Section 7-22-2148, MCA, is amended to read:

"7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the *person billed under 7-22-2124* is repaid *on or before the date due*, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to such owner which was contiguous to or joined the parcel upon which the work was done at the time the work was done, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof."

Section 24. Section 7-22-2150, MCA, is amended to read:

"7-22-2150. Cooperation with state and federal-aid programs. The *board is* empowered to cooperate with any state or federal-aid program

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that becomes available. Under such a plan of cooperation, the direction of the program shall be under the direct supervision of the *board of the district* in which the program operates."

Section 25. Section 7-3-4453, MCA, is amended to read:

"7-3-4453. Assessments for snow, ice, weed, and rubbish removal. The commission shall have the power to provide by ordinance for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice and for assessing against the property the cost of cutting and removing therefrom *nuisance* weeds and rubbish."

Section 26. Section 7-14-2131, MCA, is amended to read:

"7-14-2131. Reseeding of right-of-way. Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require *the person or agency responsible for the disturbance to comply with [section 11]*."

Section 27. Section 7-14-2132, MCA, is amended to read:

"7-14-2132. Control of weeds along roads and highways. (1) The *district weed* board shall control noxious weeds on the county roads.

(2) If the department of highways does not control noxious weeds on state and federal highways in any county, the *district weed board* shall control them. Upon presentation by the *board* of a verified account of the expenses incurred, the costs of control shall be paid by the department."

Section 28. Section 7-22-2215, MCA, is amended to read:

"7-22-2215. Rodent control board. (1) A governing body creating a rodent control district shall appoint a rodent control board composed of not less than three or more than five members. The county extension agent is an ex officio member of the board. Each member of the board must be an elector and reside within the district.

(2) Board members serve 3-year staggered terms. Of the members first appointed to a board, at least one shall serve a 1-year term and at least one shall serve a 2-year term.

(3) Each member of the board is entitled to:

(a) a mileage allowance as provided in 2-18-503 for the distance actually and necessarily traveled to perform official duties; and

(b) per diem expenses established by the governing body.

(4) The *district* weed board appointed under 7-22-2103 may be appointed by the governing body to also serve as the rodent control board, in which case the qualifications, terms, compensation, mileage, and expenses of the rodent control board are the same as those of the *district* weed board and subsections (1) through (3) do not apply."

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Section 29. Section 7-22-4101, MCA, is amended to read:

"7-22-4101. Control of nuisance weeds within municipality. *(1)* The city or town council has power to:

(a) declare and determine what vegetation within the city or town shall be *nuisance* weeds;

(b) provide the manner in which they shall be exterminated;

(c) require the owner or owners of any property within said city or town to exterminate or remove *nuisance* weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and

(d) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the *nuisance* weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

(2) A noxious weed as defined in 7-22-2101 may not be declared a nuisance weed under this section."

Section 30. Section 77-6-114, MCA, is amended to read:

"77-6-114. Lessee responsible for assessments and taxes for weed control. It shall be the duty of the board in leasing any agricultural state land to provide in such lease that the lessee of lands so leased lying within the boundaries of any noxious weed control district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid."

Section 31. **Codification instruction.** Sections 6, 10 through 12, and 15 are intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to sections 6, 10 through 12, and 15.

Section 32. **Repealer.** Sections 7-22-2122, 7-22-2125, 7-22-2127, and 7-22-2147, MCA, are repealed.

Section 33. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 23, 1985.

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CHAPTER NO. 608

[HB 724]

AN ACT PROVIDING THAT A SPECIAL ADDITIONAL MILL LEVY FOR A HOSPITAL DISTRICT MAY BE VOTED UPON AT A PRIMARY ELECTION IN AN EVEN-NUMBERED YEAR, ON THE NEXT REGULAR SCHOOL ELECTION DAY, OR BY MAIL BALLOT; AMENDING SECTION 7-34-2135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-2135, MCA, is amended to read:

"7-34-2135. Election required to impose special additional mill levy. (1) Before each additional levy provided for in 7-34-2134 may be made, the question shall be submitted to a vote of the people at *the next* primary election held in an even-numbered year *or on the next regular school election day held in accordance with 20-3-304 [or by mail ballot election as provided by [SB 169],]* in the following form:

"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) for 2 years necessary to raise the sum of (specify the approximate amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ FOR an additional levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills.

☐ AGAINST an additional tax levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills."

(2) Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws."

Section 2. **Coordination instruction.** The bracketed language in section 1 is effective only if Senate Bill No. 169 is passed and approved.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1985.

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CHAPTER NO. 609

[HB 820]

AN ACT REQUIRING PURCHASE OF A STAMP TO HUNT WATERFOWL; REQUIRING THAT MONEY GENERATED BY THE SALE OF STAMPS AND RELATED ARTWORK BE USED FOR PRESERVATION AND DEVELOPMENT OF WETLANDS; REQUIRING THE APPOINTMENT OF AN ADVISORY COUNCIL TO ADVISE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS ON THE USE OF MONEY RAISED BY THE SALE OF STAMPS AND ARTWORK; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Stamp required to hunt waterfowl.** (1) It is unlawful for any person 16 years of age or older to pursue, hunt, shoot, or kill waterfowl without first having obtained a valid waterfowl stamp from the department. The fee for such stamp is $5.

(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans.

Section 2. **Procurement and sale of artwork — disposition of proceeds.** (1) The department shall contract with an art publisher for the selection, by contest or other method, of a design for the annual waterfowl stamp required by [section 1] and for the production of the stamp and related artwork. The contract must provide that only designs submitted by Montana artists may be selected. The department shall provide for the sale of stamps exclusively by the department or its license agents, but may make such other arrangements for the sale of related artwork as it determines appropriate. The procurement and sale of the stamps and artwork are exempt from the provisions of Title 18, chapter 4, part 3.

(2) Money received from the sale of stamps and related artwork must be deposited in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.

Section 3. **Appointment of advisory council.** (1) The director shall appoint an advisory council pursuant to 2-15-122 to review proposals developed by the department which involve the use of money received by the department under [section 2] for the protection, conservation, and development of wetlands in Montana.

(2) Members must be appointed to the advisory council who represent Montana sportsmen, nonconsumptive users of wildlife, and the agricultural industry.

Section 4. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 87.

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Section 5. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective dates.** Section 1 is effective March 1, 1986. Sections 2 through 6 are effective on passage and approval.

Approved April 23, 1985.

CHAPTER NO. 610

[SB 19]

AN ACT ESTABLISHING AND FUNDING A CHILD ABUSE AND NEGLECT PREVENTION PROGRAM; GRANTING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 15-30-121 AND 25-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Children's trust fund account.** There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in [section 2], for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in [section 3].

Section 2. **Montana children's trust fund board.** (1) There is a Montana children's trust fund board, consisting of seven members appointed by the governor and serving 3-year terms. Two board members must be chosen from state government agencies involved in education and social work relating to children. The governor shall ensure geographic distribution of appointees.

(2) The board is allocated to the department of social and rehabilitation services for administrative purposes only, as provided in 2-15-121.

Section 3. **Child abuse and neglect prevention program.** (1) The Montana children's trust fund board, provided for in [section 2], shall use the money in the children's trust fund account established by [section 1] to fund services and activities operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect.

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

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(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement this section and [sections 4 and 5].

Section 4. **Gifts and grants to program.** The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants must, upon receipt, be paid into the children's trust fund account established by [section 1].

Section 5. **Program costs.** The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by [section 1]. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of social and rehabilitation services to the extent possible.

Section 6. **Nonsupplantation of funds.** Funds deposited in the children's trust fund account may be used only for the program authorized in [section 3] and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of social and rehabilitation services.

Section 7. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $25; for filing a complaint in intervention, from the intervenor, $25; and for filing a petition for dissolution of marriage, an additional fee of *$30*;

(b) from each defendant or respondent, on his appearance, $15;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

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(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, $30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $35;

(p) for filing a declaration of marriage without solemnization, $30.

(2) Except as provided in *subsections* (3) *and (4)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) *Of the* additional fee for filing a petition for dissolution of marriage, *$25* must be deposited in the state general fund *and $5 must be deposited in the children's trust fund account established by [section 1]*."

Section 8. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974, except that:

(a) the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse;

(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began

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January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year; *and*

(7) contributions to the child abuse and neglect program provided for in [section 3], subject to the conditions set forth in [section 10]."

Section 9. **Voluntary checkoff for child abuse and neglect prevention program.** (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the child abuse and neglect prevention program provided for in [section 3], by marking the appropriate box on his state income tax return.

(2) Each Montana state individual income tax return form must contain a provision for indicating a contribution to the child abuse and neglect prevention program in substantially the following form:

Child abuse and neglect prevention program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the child abuse and neglect prevention program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose.

(3) Money received under this section must be deposited in the children's trust fund account, created under [section 1], after the department of revenue has deducted the amount necessary for the department to administer this section.

Section 10. **Deduction for contributions to the child abuse and neglect prevention program.** A taxpayer filing an individual tax return who does not elect to take the standard deduction provided for in 15-30-122, may, in computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the taxable year for which the return is filed, he may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with

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15-30-144, he may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return.

Section 11. **Deposit of deductible contributions.** (1) All money received under [section 10] must be deposited in the children's trust fund account established in [section 1].

(2) The department of revenue shall immediately forward for deposit in the children's trust fund account all checks and other orders of payment made as contributions under [section 10]. The department may make no deductions for administrative expenses in the handling of such direct payments to the child abuse and neglect prevention program.

Section 12. **Codification instruction.** (1) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to section 2.

(2) Sections 9 through 11 are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 9 through 11.

Section 13. **Termination date.** This act terminates on January 1, 1990.

Approved April 23, 1985.

CHAPTER NO. 611

[SB 106]

AN ACT TO ALLOW A PARENT WHO IS A SHAREHOLDER OF A CLOSELY HELD OR FAMILY CORPORATION TO RECEIVE A REDUCTION IN ANY OUT-OF-DISTRICT TUITION CHARGE BASED ON A PERCENTAGE OF THE PROPERTY TAXES PAID BY THE CORPORATION FOR THE SUPPORT OF THE SCHOOL DISTRICT THE CHILD WILL ATTEND; AMENDING SECTIONS 20-5-303 AND 20-5-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-303, MCA, is amended to read:

"20-5-303. Individual tuition for elementary pupil. *(1)* No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived

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by the trustees for all tuition payments. However, under this section, tuition as determined in 20-5-305 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(2) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in 35-1-102 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (2)(b)(i) is the percentage of taxes paid as determined in subsection (2)(b)(ii) that is to be credited to reduce the tuition charge."

Section 2. Section 20-5-313, MCA, is amended to read:

"20-5-313. Individual tuition for high school pupil. (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees. However, under this section, tuition as determined in 20-5-312 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(3) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in 35-1-102 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

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(c) The percentage of total shares as determined in subsection (3)(b)(i) is the percentage of taxes paid as determined in subsection (3)(b)(ii) that is to be credited to reduce the tuition charge."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved April 23, 1985.

CHAPTER NO. 612

[SB 411]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMISSION AND EVALUATION OF YOUTHS AT THE MONTANA YOUTH TREATMENT CENTER AND MONTANA STATE HOSPITAL; AMENDING SECTIONS 41-5-523, 53-21-501, 53-21-505, AND 53-21-506, MCA; REPEALING SECTION 53-21-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

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(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

(4) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(9) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21.

(10) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

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It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ....., A.D. 19...

.....
Judge"

Section 2. Section 53-21-501, MCA, is amended to read:

"**53-21-501. Location and function of center.** There is a Montana youth treatment center located at Billings, Montana. The function of the center is the care, treatment, *and evaluation of individuals who are 12 years of age or older and under 19 years of age who are committed pursuant to 53-21-505 or 41-5-523. The center is a mental health facility as defined in 53-21-102(6).*"

Section 3. Section 53-21-505, MCA, is amended to read:

"**53-21-505. No voluntary admissions — commitment provisions.** (1) There may be no voluntary admissions or commitments to the Montana youth treatment center. All admissions to the center, *other than those provided for in 41-5-523,* must be by appropriate district court commitment, pursuant to the provisions of 53-21-114 through 53-21-127.

(2) The duration of the initial commitment to the treatment center is 3 months, and the commitment may be renewed or extended pursuant to the provisions of 53-21-128 for 6 months, and *further extensions may be obtained under the same procedures as 53-21-128(2).*

(3) In addition to the *commitment procedures required in subsection (1),* an individual *must be at least* 12 years of age *but less* than 18 years of age upon the date of his admission to the center."

Section 4. Section 53-21-506, MCA, is amended to read:

"**53-21-506. No commitment to Montana state hospital.** *An individual less than* 18 years of age may *not* be voluntarily admitted or committed by a court to *the* Montana state hospital *unless such individual is transferred to district court pursuant to 41-5-206.*"

Section 5. **Repealer.** Section 53-21-507, MCA, is repealed.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 7. **Extension of authority.** Any existing authority of the department of social and rehabilitation services or the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1985.

CHAPTER NO. 613

[SB 436]

AN ACT TO REVISE THE DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES IN COMPUTING NET INCOME FOR INCOME TAX PURPOSES; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) *expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:*

(a) *expenses for household and dependent care services necessary for gainful employment incurred for:*

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) *employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:*

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) *expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;*

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed on a substantially full-time basis; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual

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with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act is applicable to taxable years beginning after December 31, 1984.

Approved April 23, 1985.

CHAPTER NO. 614

[SB 22]

AN ACT TO AUTHORIZE COUNTIES TO ESTABLISH SPEED LIMITS ON COUNTY ROADS; AMENDING SECTION 61-8-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County authority to establish speed limits.** A board of county commissioners may, by ordinance, establish a special speed limit in accordance with 61-8-306 and 61-8-310 on any county road.

Section 2. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime; or

(c) decreases the limit outside an urban district, but not to less than *15* miles per hour.

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(2) A board of county commissioners may set limits as provided in subsection (1)(c) without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 14, part 21, and the provisions of Title 7, chapter 14, part 21, apply to section 1.

Approved April 24, 1985.

CHAPTER NO. 615

[SB 66]

AN ACT REQUIRING CONSUMER CONTRACTS TO BE WRITTEN IN PLAIN LANGUAGE; PROVIDING FOR COVERAGE, EXEMPTIONS, AND REMEDIES; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Plain Language in Contracts Act".

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

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Section 3. **Requirements for contracts.** (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if:

(a) it is written in a clear and coherent manner using words with common and everyday meanings;

(b) it is appropriately divided and captioned by its various sections;

(c) it uses type of readable size;

(d) it uses ink that contrasts with the paper.

Section 4. **Scope.** (1) Except as provided in subsection (2), [section 3] applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) [Section 3] does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds $50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) consumer transactions subject to the provisions of 33-15-321 through 33-15-329;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality;

(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate.

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of [this act]; nor is a legal description of real property a violation of [this act].

Section 5. **Consumer's remedy.** (1) Except as otherwise provided in [section 6], if an agreement does not comply with the requirements of [section 3], the seller, lessor, or lender is liable to a consumer who signed the agreement in an amount equal to:

(a) $50 plus any actual damages; and

(b) costs of the action.

(2) A consumer may bring an action under this section in any court of competent jurisdiction.

Section 6. **Limitations on remedies.** (1) A consumer may not bring an action under [section 5] after the date on which his obligations in connection with the agreement are scheduled to be finally performed.

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(2) No seller, lessor, or lender is liable under [section 5] if a good faith attempt is made to comply with requirements of [section 3].

(3) Noncompliance with the requirements of [section 3] does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under [section 5], the seller, lessor, or lender is liable under [section 5] for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) No consumer may bring an action under [this act] on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under [this act].

Section 7. **Remedies cumulative — waiver void.** (1) Nothing in [this act] precludes a consumer from making any claim or raising any defense that would have been available to the consumer if [this act] were not in effect.

(2) A consumer may not waive the rights provided by [this act], and any such waiver is void.

Section 8. **Applicability.** This act applies to consumer contracts entered into after July 1, 1987.

Approved April 24, 1985.

CHAPTER NO. 616

[SB 93]

AN ACT ALLOWING LOCAL GOVERNMENTS TO ESTABLISH REQUIREMENTS FOR HANDICAPPED PERSONS' SPECIAL RESERVED PARKING SPACES; AMENDING SECTION 49-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use.

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(2) No vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) The governing body of a city, town, or county may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons on public or private property in accordance with subsection (2):

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Approved April 24, 1985.

CHAPTER NO. 617

[SB 165]

AN ACT GENERALLY REVISING THE LAW REGARDING DEBTOR GROUP LIFE, CREDIT LIFE, AND CREDIT DISABILITY INSURANCE POLICIES; INCREASING THE CREDIT TRANSACTION DURATION PERIOD FOR CREDIT LIFE AND DISABILITY POLICIES EXEMPT FROM REGULATION; AMENDING SECTIONS 33-20-1105 AND 33-21-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-1105, MCA, is amended to read:

"33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed

the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment."

Section 2. Section 33-21-102, MCA, is amended to read:

"33-21-102. Purpose and scope. (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than *15* years' duration."

Section 3. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

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Section 4. **Applicability.** This act applies to policies of credit life and disability insurance delivered or issued for delivery on or after October 1, 1985.

Approved April 24, 1985.

CHAPTER NO. 618

[SB 319]

AN ACT PROVIDING FOR THE APPOINTMENT OF A SURROGATE PARENT FOR A HANDICAPPED CHILD TO REPRESENT THE CHILD IN THE DECISIONMAKING PROCESS RELATED TO THE CHILD'S EDUCATION; PRESCRIBING THE RESPONSIBILITIES OF A SURROGATE PARENT; AMENDING SECTIONS 20-7-401 THROUGH 20-7-403 AND 20-7-414, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation,

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as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, deaf/blind, multihandicapped, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(6) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.

(9) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(10) "Other health-impaired" means:

(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or

(b) having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

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(11) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology, audiology, occupational therapy, and physical therapy.

(12) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(13) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(14) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(15) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(16) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Section 2. Section 20-7-402, MCA, is amended to read:

"20-7-402. Special education to comply with board policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

(a) placement of handicapped children in the least restrictive alternative setting;

(b) due process for all handicapped children, *including the appointment of a surrogate parent if necessary*;

(c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each handicapped child; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education."

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Section 3. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying handicapped children;

(5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) preparing appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education;

(13) administering regional special education services for children in need of special education in accordance with policies of the board of public education; and

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(14) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education."

Section 4. Section 20-7-414, MCA, is amended to read:

"20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, and such determination shall be made in compliance with the procedures established in the rules of the superintendent of public instruction. *Whenever the trustees of a school district or the governing authority of an institution learn of a handicapped child in their jurisdiction who is in need of special education, they shall determine whether the child is in need of a surrogate parent by determining whether the parents or guardian is unknown or unavailable or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution must nominate a surrogate parent for the child as provided in [section 5].*

(2) Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. No special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the maximum-budget-without-a-vote for special education."

Section 5. **Appointment of surrogate parent.** (1) Any person may advise the trustees of a school district or the governing authority of an institution of a handicapped child within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution must determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with his representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

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(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. If the court does not appoint the nominee, the trustees of a school district or the governing authority of an institution must make another nomination under this section.

Section 6. **Responsibilities of surrogate parent.** A person assigned as a surrogate parent shall represent the handicapped child in all decision-making processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

Section 7. **Surrogate parent — immunity from liability — reimbursement.** (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

Section 8. **Extension of authority.** Any existing authority of the board of education or superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Codification instruction.** Sections 5 through 7 are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions of Title 20 apply to sections 5 through 7.

Approved April 24, 1985.

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CHAPTER NO. 619

[SB 379]

AN ACT ALLOWING THE COAL BOARD TO MAKE GRANTS FOR CERTAIN HIGHWAY CONSTRUCTION, REPAIR, AND MAINTENANCE; AMENDING SECTIONS 90-6-205, 90-6-207, AND 90-6-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account:

(a) , to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; *and*

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in *this subsection (5)*, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

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Section 2. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall annually designate counties, incorporated cities and towns, school districts, and other governmental units which have had or expect to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (2). *Except as provided in 90-6-205(5)(b), the* coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(2) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(3) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(4) All funds placed in the local impact and educational trust fund account established under this part, subject to the limitations imposed by 90-6-211, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education."

Section 3. Section 90-6-209, MCA, is amended to read:

"90-6-209. Limitations on grants and loans. (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project, as long as the grant or loan does not extend over more than 10 years and does not exceed reasonable revenue expectations. The total amount of grants and loans to state agencies, *except grants made pursuant to 90-6-205(5)(b),* and Indian tribes may not exceed 7% of the total money allocated to the board during each fiscal year.

(2) (a) No loan may be approved by the board if the source of money for repayment would be derived from property taxes.

(b) The repayment period for loans approved by the board may not exceed 20 years.

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(c) The board shall hold all loan contracts within its administrative offices. The board may not sell, assign, or pledge a loan contract to any other entity.

(d) A local government unit or the governing body of a federally recognized Indian tribe receiving a loan from the board shall use or commit for use the loan money within 1 year of the date of the board's final approval of the loan.

(e) If a local government unit or the governing body of a federally recognized Indian tribe fails to comply with subsection *(2)(d)*, the entire loan must be repaid within 30 days following expiration of the 1-year period.

(3) No loan or grant to an Indian tribe under 90-6-205 may be approved by the board unless, with respect to that loan or grant:

(a) the governing body of the tribe has agreed:

(i) to waive its immunity from suit on any issue specifically arising from the transaction of a loan or grant obtained under this part; and

(ii) to the adjudication of any dispute arising out of the loan or grant transaction in the district court of the first judicial district of the state of Montana; and

(b) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever such approval is necessary."

Section 4. **Extension of authority.** Any existing authority of the coal board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 24, 1985.

CHAPTER NO. 620

[SB 416]

AN ACT REVISING LAWS REGULATING THE DEPOSIT AND INVESTMENT OF LOCAL GOVERNMENT FUNDS; BROADENING THE RANGE OF AUTHORIZED UNITED STATES SECURITIES THAT MAY BE PURCHASED; CLARIFYING PROVISIONS RELATED TO REPURCHASE AGREEMENTS; RAISING FROM 50 TO 100 PERCENT THE PROPORTION OF COLLATERALIZATION THAT MAY BE REQUIRED; PLACING AN ASSET REQUIREMENT ON INSTITUTIONS MAKING INVESTMENTS; AND AMENDING SECTIONS 7-6-202, 7-6-207, AND 7-6-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-202, MCA, is amended to read:

"7-6-202. Investment of public money in direct obligations of the United States. Said local governing body is hereby authorized to

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invest such public money not necessary for immediate use by such county, city, or town in direct obligations of the United States government *and securities issued by agencies of the United States.*"

Section 2. Section 7-6-207, MCA, is amended to read:

"**7-6-207. Deposit security.** (1) The local governing body may require security only for that portion of the deposits which is not guaranteed or insured according to law and, as to such unguaranteed or uninsured portion, to the extent of:

(a) 50% of such deposits *if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or*

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security shall consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk and his successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It is the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of the acceptance and approval upon the record of their proceedings, and the bonds and securities shall be reapproved at least quarter-annually thereafter."

Section 3. Section 7-6-213, MCA, is amended to read:

"**7-6-213. Repurchase agreements — bidding.** (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish *one or more* repurchase *agreements, including daily repurchase agreements.*

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body *may* maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in *the state of Montana which* are authorized to accept

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demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested."

Section 4. **Coordination instruction.** If House Bill No. 248 is passed and approved, section 2 of this act, amending 7-6-207, is void.

Approved April 24, 1985.

CHAPTER NO. 621

[HB 279]

AN ACT PROVIDING THAT FUNDS OF A RURAL IMPROVEMENT DISTRICT NOT NEEDED TO SERVICE THE DEBTS OF A DISTRICT MAY BE TRANSFERRED TO THE DISTRICT'S MAINTENANCE FUND; PROVIDING THAT AFTER THE DEBTS OF A RURAL IMPROVEMENT DISTRICT HAVE BEEN PAID, REMAINING DISTRICT MONEY MAY BE TRANSFERRED TO THE DISTRICT'S MAINTENANCE FUND; AMENDING SECTION 7-12-2182, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2182, MCA, is amended to read:

"7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund, the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured thereby. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured thereby.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district secured by the revolving fund or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of

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the board, be transferred to the revolving fund *and the balance of such money or, if there is no outstanding loan, so much of such money as the board considers necessary may be transferred to the improvement district's maintenance fund.* After all the bonds and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund *or the improvement district's maintenance fund.*"

Section 2. **Effective date.** This act is effective July 1, 1985.

Approved April 24, 1985.

CHAPTER NO. 622

[HB 582]

AN ACT TO CHANGE THE QUALIFICATIONS FOR THE OFFICE OF COUNTY SURVEYOR; AMENDING SECTION 7-4-2801, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2801, MCA, is amended to read:

"**7-4-2801. Qualifications for county surveyor and deputies.** (1) A county surveyor shall be a *registered* professional engineer *or registered professional land surveyor* who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering *or land surveying* shall be considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering *or land surveying.*"

Approved April 24, 1985.

CHAPTER NO. 623

[HB 652]

AN ACT TO ALLOW THE DEDUCTION OF CERTAIN COSTS FROM THE NET PROCEEDS TAX ON MINES APPLICABLE TO NONMETALLIC MINES AND MINING CLAIMS; AMENDING SECTIONS 15-23-502 AND 15-23-503, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-502, MCA, is amended to read:

"**15-23-502. Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or

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lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security

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in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals; *and*

(15) cost of mine reclamation."

Section 2. Section 15-23-503, MCA, is amended to read:

"**15-23-503. Net proceeds — how computed.** (1) The department of revenue shall calculate from the returns the gross product yielded from such mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Net proceeds shall be determined by subtracting from the value of the gross product thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the person so engaged in mining;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as hereinafter provided;

(d) all moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of such milling and reduction works for the calendar year for which such return is made;

(f) all moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals therefrom and for marketing the product and the conversion of the same into money;

(g) all moneys expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all moneys expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, *for the cost of reclamation at the site of the mine,* and for engineering and geological services conducted in Montana for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of such cost each year for a period of 10 years.

(3) No moneys invested in mines or improvements may be allowed as a deduction unless all machinery, equipment, and buildings represented by such moneys are returned to the county in which such mine is located for

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assessment purposes at the level of assessment of all other property in such county.

(4) No moneys invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may be included in such expenditures, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Applicability date.** This act is applicable to taxable years beginning after December 31, 1985.

Approved April 24, 1985.

CHAPTER NO. 624

[HB 770]

AN ACT TO CONTROL THE IMPORTATION FOR INTRODUCTION AND THE TRANSPLANTATION OR INTRODUCTION OF WILDLIFE; AMENDING SECTION 87-3-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-105, MCA, is amended to read:

"87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife. *Except as provided in [section 11], it* is unlawful for any person to *import for introduction or to* transplant or introduce any wildlife into the state of Montana *unless done in accordance with the provisions of [sections 2 through 12]*."

Section 2. **Purpose.** The legislature finds that in order to protect the native wildlife and plant species of Montana and to protect the agricultural production of Montana, it is necessary to provide for the control of the importation for introduction and the transplantation or introduction of wildlife in the state. Serious threats, known and unknown, to the well-being of native wildlife and plant species and to agricultural production, resulting from the introduction of wildlife into natural habitats, necessitate the prohibition of the importation for introduction and the transplantation or introduction of wildlife into natural habitats unless it can be shown that no harm will result from such transplantation or introduction. Any importation for introduction or the transplantation or introduction permitted must be conducted in a manner to assure that the introduced or transplanted population can be controlled if harm arises from unforeseen effects.

Section 3. **Definitions.** For purposes of [sections 2 through 12], the following definitions apply:

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(1) "Feral" means the appearance in a natural habitat of an animal that has escaped domestication and become wild.

(2) "Importation" means the act of bringing into the state any wildlife.

(3) "Introduction" means the release of or attempt to release, intentional or otherwise, wildlife from outside the state into natural habitats of the state.

(4) "Natural habitat" means any area in which the introduction of wildlife species may result in an uncontrolled, naturally reproducing population of that species becoming established.

(5) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into natural habitats in another part of the state.

(6) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg or offspring thereof.

Section 4. **Control of importation for introduction and transplantation or introduction of wildlife.** Except as otherwise provided, the importation for introduction or the transplantation or introduction of any wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production and that the transplantation or introduction of a species has significant public benefits.

Section 5. **Control of wildlife species permitted to be transplanted or introduced.** Any wildlife species listed in [section 9] or approved by the commission for introduction or transplantation may be introduced or transplanted only subject to a plan developed by the department to assure that the population can be controlled if any unforeseen harm should occur.

Section 6. **Extermination or control of transplanted or introduced wildlife or feral species posing threat.** With the exception of the species listed in [section 9], any wildlife or feral species transplanted or introduced in the state may be exterminated or controlled by the department if the commission, after scientific investigation by the department and after public hearing, determines that the species poses harm to native wildlife or plants or to agricultural production. If the threat of harm is immediate, the commission may by emergency rule, without hearing, authorize the department to take immediate action to control or exterminate a transplanted or introduced wildlife or feral species.

Section 7. **Authority for commission to control importation generally of certain wildlife species.** The commission may, after public hearing, list by administrative rule wildlife species prohibited from importation for captive breeding for research or commercial purposes or for the commercial pet trade if the commission finds, based on scientific investigation, that the species, because of behavioral traits or other biological considerations, would not be readily subject to control by man while in captivity or that if released into natural habitat would pose a substantial threat to native wildlife and plants or agricultural production.

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Section 8. **Consultation with the departments of agriculture and livestock.** The commission and the department shall consult with the departments of agriculture and livestock in all matters relating to the control of wildlife species that may have a harmful effect on agricultural production or livestock operations in the state.

Section 9. **Wildlife species authorized for introduction or transplantation.** (1) The following wildlife species may be introduced or transplanted by the department based upon scientific investigation and upon approval of the commission:

(a) gray (Hungarian) partridge (Perdix perdix);

(b) chukar partridge (Alectoris chukar);

(c) ring-necked pheasant (Phasianus colchicus);

(d) turkey (Meleagris gallopavo);

(e) rainbow trout (Salmo gairdneri);

(f) golden trout (Salmo aquabonita);

(g) brown trout (Salmo trutta);

(h) brook trout (Salvelinus fontinalis);

(i) lake trout (Salvelinus namaycush);

(j) northern pike (Esox lucius);

(k) black bullhead (Ictalurus melas);

(l) yellow bullhead (Ictalurus natalis);

(m) largemouth bass (Micropterus salmoides);

(n) smallmouth bass (Micropterus dolomieui);

(o) pumpkinseed sunfish (Lepomis gibbosus);

(p) bluegill (Lepomis macrochirus);

(q) green sunfish (Lepomis cyanellus);

(r) rock bass (Ambloplites rupestris);

(s) black crappie (Pomoxis nigromaculatus);

(t) white crappie (Pomoxis annularis);

(u) yellow perch (Perca flavescens);

(v) walleye (Stizostedion vitreum);

(w) cisco (tulibee) (Coregonus artedii);

(x) spottail shiner (Notropis hudsonius);

(y) kokanee salmon (Oncorhynchus nerka);

(z) chinook salmon (Oncorhynchus tshawytscha);

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(aa) lake whitefish (Coregonus clupeaformis);

(bb) golden shiner (Notemigonus crysoleucas).

(2) The commission may by rule and subject to the provisions of [section 4] authorize the department to transplant or introduce species of wildlife not listed in subsection (1).

Section 10. **Rulemaking.** (1) The commission may adopt rules to implement [sections 2 through 7 and 9]. In implementing [section 5], the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing [section 6], the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement [sections 5 and 6]. In implementing [sections 5 and 6], the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

Section 11. **Applicability to other provisions for importation or introduction of wildlife.** [Sections 2 through 6 and 8 through 12] do not apply to the importation of wildlife for the commercial pet trade or to the provisions on importation or introduction of wildlife contained in the following laws:

(1) Title 80;

(2) 87-3-207 and 87-3-208;

(3) 87-3-221 through 87-3-224;

(4) 87-4-422;

(5) 87-5-112;

(6) 87-5-205;

(7) 87-5-302; or

(8) Title 81, chapter 2.

Section 12. **Penalty — license and permit revocation and denial.** A person who violates a provision of [sections 2 through 12] is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

Section 13. **Codification instruction.** Sections 2 through 12 are intended to be codified as an integral part of Title 87, chapter 5, and the provisions of Title 87 apply to sections 2 through 12.

Approved April 24, 1985.

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CHAPTER NO. 625

[HB 779]

AN ACT CREATING A SPECIAL LAW ENFORCEMENT ASSISTANCE ACCOUNT; AUTHORIZING THE ACCOUNT TO RECEIVE FUNDS AND PROPERTIES FORFEITED UNDER FEDERAL LAW; AND APPROPRIATING THE PROCEEDS OF THE ACCOUNT FOR SPECIFIED LAW ENFORCEMENT PURPOSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Law enforcement assistance account created.** There is an account in the federal special revenue fund defined in 17-2-102 to be known as the special law enforcement assistance account.

Section 2. **Federal forfeitures deposited in account.** Property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in [section 1].

Section 3. **Limitations on use of special law enforcement assistance account.** Money, property, and proceeds from property credited to the account may be used only for the following types of activities:

(1) payment of informants;

(2) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(3) use as gambling front money by undercover agents; and

(4) payment of overtime to state or local law enforcement officers when engaged in special investigations.

Section 4. **Appropriation.** Money, property, and proceeds from property deposited in the special law enforcement assistance account in the biennium ending June 30, 1987, is appropriated to the Department of Justice for the purposes of [section 3].

Approved April 24, 1985.

CHAPTER NO. 626

[HB 807]

AN ACT PROVIDING FOR THE PROTECTION OF CERTAIN HANDICAPPED, INJURED, OR OTHERWISE SERIOUSLY ILL CHILDREN BY REQUIRING THAT THEY BE GIVEN MEDICAL TREATMENT; AMENDING SECTION 41-3-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

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(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, *including the prevention of the withholding of medically indicated treatment,* permitted or authorized under state law.

(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

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(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm" means imminent risk of harm.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-1122.

(13) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(14) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older."

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Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 24, 1985.

CHAPTER NO. 627

[HB 844]

AN ACT TO EXEMPT FROM TAXATION CERTAIN EQUIPMENT USED TO FARM SUGAR BEETS ONLY IF SUCH EQUIPMENT HAS BEEN UNUSED FOR A CERTAIN PERIOD; AMENDING SECTION 15-6-207, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-207, MCA, is amended to read:

"15-6-207. Agricultural exemptions. *(1)* The following agricultural products are exempt from taxation:

(a) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(b) all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest; and

(c) livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month if assessed on the average inventory basis or on March 1 if assessed as provided in 15-24-911(1)(a) and swine which have not attained the age of 3 months as of January 1.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date, and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability date.** This act is applicable to taxable years beginning after December 31, 1985.

Approved April 24, 1985.

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CHAPTER NO. 628

[SB 26]

AN ACT PERMITTING THE BOARD OF LAND COMMISSIONERS TO EXCHANGE STATE LANDS LOCATED WITHIN INDIAN RESERVATIONS FOR LANDS OWNED BY TRIBAL GOVERNMENTS; PERMITTING THE BOARD TO SELL STATE LANDS LOCATED WITHIN INDIAN RESERVATIONS TO TRIBAL GOVERNMENTS; AMENDING SECTIONS 77-2-201, 77-2-306, AND 77-2-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-201, MCA, is amended to read:

"77-2-201. Exchange of land with United States or tribal governments. (1) *(a)* The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands exchanged are located."

Section 2. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes

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intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. No sale involving land in excess of the acreage limitations in 77-2-307 may be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands sold are located."

Section 3. Section 77-2-307, MCA, is amended to read:

"77-2-307. Limitation on acreage. *(1) Except as provided in subsection (2), no* person or corporation *may* purchase more than one section of state land, and this area shall not include more than 160 acres of land susceptible of irrigation.

(2) The limitations *in subsection (1)* as to area and irrigability *do* not apply to:

(a) lands within a federal irrigation project wherein the Congress of the United States of America authorizes water to be furnished to an area exceeding 160 irrigable acres*; or*

(b) lands to be sold to a tribal government as provided in 77-2-306."

Approved April 25, 1985.

CHAPTER NO. 629

[SB 79]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY OF THE BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Occupational Therapy Practice Act".

Section 2. **Purpose.** The legislature declares that it is the purpose of [this act] to provide for the regulation of persons offering occupational therapy services in order to:

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(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by [section 5].

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under [this act].

(4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and prevocational and leisure capacities;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremities orthotic devices;

(e) using specifically designed crafts and exercises to enhance functional performance;

(f) administering and interpreting tests such as manual muscle and range of motion; and

(g) adapting environments for the handicapped.

(5) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

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(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under [this act], who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it reads on October 1, 1985.

Section 4. **Exemptions.** Nothing in [this act] prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in [section 3] but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of [section 11] if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under [this act], provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of [this act]; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy association; or

(7) a person employed as an occupational therapy aide.

Section 5. **Board of occupational therapy practice.** (1) There is a board of occupational therapy practice.

(2) The board consists of five members appointed by the governor. The members are:

(a) three occupational therapists licensed under [this act] who are actively engaged in the practice or teaching of occupational therapy; and

(b) two members of the general public with an interest in the rights of the consumers of health services.

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(3) The Montana occupational therapy association may submit names of nominees under (2)(a) of this section to the governor as provided in 37-1-132.

(4) Each appointment is subject to confirmation by the senate then meeting in regular session or next meeting in regular session following appointment.

(5) Members shall serve staggered 4-year terms. A term begins on the first day of the calendar year and ends on the last day of the calendar year or when a successor is appointed. A member who has served two successive complete terms is not eligible for reappointment until after 1 year.

(6) The governor may, after hearing, remove a member for neglect of duty or other just cause.

(7) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

Section 6. **Organization — general rulemaking power — quorum.** (1) The board shall meet annually and elect a chairman and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of [this act]. Rules adopted by the board may include such rules as are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

(3) Three board members constitute a quorum for the transaction of business.

Section 7. **Powers and duties of board.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of [this act];

(b) evaluate the qualifications of applicants for licensure under [this act] and approve and supervise the examination of such applicants;

(c) investigate persons engaging in practices that allegedly violate the provisions of [this act];

(d) adopt rules relating to professional licensure and the establishment of ethical standards of practice under [this act];

(e) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

(f) adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the chairman or secretary of the board and stamped with the seal, is prima facie evidence of the validity of such document.

(3) The department may employ persons it considers necessary to carry out the provisions of [this act].

Section 8. **Compensation and expenses.** Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

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Section 9. **License required.** (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of [this act].

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under [this act].

Section 10. **Application.** An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of [section 11(1)(a) and (b)].

Section 11. **Requirements for licensure.** (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association; and

(c) pass an examination as provided for in [section 12].

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

Section 12. **Examination.** (1) A person who satisfies the educational and experience requirements of [section 11] may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by the board under [section 18]. An unsuccessful examinee may apply for reexamination upon payment of the prescribed fee.

(2) The board shall adopt a written examination for occupational therapists and a written examination for occupational therapy assistants and establish standards for acceptable performance.

(3) Examinations shall be given at least twice each year at a time and place and under such supervision as the board may determine. The board shall give notice of the examinations in accordance with rules adopted by the board.

(4) Examinees may obtain their scores and review their examinations in accordance with rules established by the board.

Section 13. **Waiver of requirements for licensure.** (1) The board may waive the examination, educational or experience requirements and

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grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure that the board considers equivalent to the requirements for licensure under [this act].

(2) The board may waive the examination, education, or experience requirements and grant a license to a person certified by the American occupational therapy association (AOTA) as a certified occupational therapy assistant (COTA) or an occupational therapist registered (OTR) after [the effective date of this act] if the board determines that the requirements for such certification are equivalent to the requirements for licensure under [this act].

(3) Occupational therapists and occupational therapy assistants trained in a foreign country must satisfy the examination requirements of [section 12]. The board shall require foreign-trained applicants, before examination, to furnish proof of educational and supervised fieldwork requirements substantially equal to those required by [section 11].

(4) The board may waive the educational requirements and license an applicant as an occupational therapist if the applicant has practiced as an occupational therapy assistant for 4 years, has completed the experience requirement before January 1, 1988, and has passed the examination for occupational therapists.

Section 14. **Issuance of license.** (1) The board shall issue a license to any person who meets the requirements of [this act] upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

Section 15. **Limited permit.** A limited permit may be granted to a person who has completed the education and experience requirements of [this act]. The permit allows the person to practice occupational therapy in association with a licensed occupational therapist. This permit is valid until the person is issued a license under [section 14] or until the results of the examination taken by the person are available to the board. This limited permit may be renewed only one time if the person has failed the examination.

Section 16. **Renewal of license — inactive status.** (1) Each license issued under [this act] is subject to annual renewal upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than 5 years after its expiration.

(2) Upon request, the board may grant inactive status to a licensee who:

(a) does not practice as an occupational therapist or an occupational therapy assistant; and

(b) does not hold himself out as an occupational therapist or an occupational therapy assistant.

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Section 17. **Denial, suspension, or revocation of license.** (1) The board may refuse to issue or renew a license or may revoke or suspend the license of any licensee or applicant if he has:

(a) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(b) violated ethical standards of practice established pursuant to [this act];

(c) been convicted of a crime considered sufficient under 37-1-203 to warrant denial, revocation, or suspension of the license;

(d) violated any lawful order or rule of the board; or

(e) violated any provision of [this act].

(2) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures that comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after the denial, suspension, or revocation of a license, a person may apply for reinstatement and licensure. The board may in its discretion require an examination for reinstatement.

Section 18. **Fees.** (1) The board may adopt fees in accordance with 37-1-134 for:

(a) applications for licensure;

(b) examination;

(c) initial license issuance;

(d) license renewal;

(e) late license renewal; and

(f) limited permit issuance.

(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).

Section 19. **Penalty.** A person convicted of violating [this act] is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

Section 20. **Grandfather provisions.** The board shall grant a license to any person certified as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the American occupational therapy association (AOTA) prior to [the effective date of this act].

Section 21. **Initial board appointment.** (1) Notwithstanding the provisions of [section 5], the governor shall within 60 days following [the effective date of this act] appoint the initial board as follows:

(a) two members shall be appointed for a term of 2 years;

(b) two members shall be appointed for a term of 3 years; and

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(c) one member shall be appointed for a term of 4 years.

(2) Initial appointments of occupational therapist and occupational therapist assistant members shall be made from persons eligible for licensure pursuant to [section 20].

(3) Initial board members shall serve through December 31 of the year in which they are appointed before commencing the terms prescribed by this section.

(4) The Montana occupational therapy association may nominate persons for initial membership on the board in compliance with 37-1-132.

Section 22. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Codification instruction.** (1) Sections 1 through 4 and 6 through 19 are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to sections 1 through 4 and 6 through 19.

(2) Section 5 is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to section 5.

Approved April 25, 1985.

CHAPTER NO. 630

[SB 109]

AN ACT REQUIRING LENDERS TO NOTIFY MUSEUMS OF CHANGES OF ADDRESS AND TRANSFERS OF OWNERSHIP OF LOANED PROPERTY; ESTABLISHING A PROCEDURE FOR LENDERS TO PRESERVE THEIR INTERESTS IN PROPERTY LOANED TO A MUSEUM; AND VESTING TITLE TO UNCLAIMED PROPERTY IN THE MUSEUM THAT HOLDS IT; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This part may be cited as the "Museum Loan Act".

Section 2. **Purpose.** The people of Montana have an interest in preserving and protecting objects of scientific, historic, artistic, or cultural value and making them accessible to the public. The purpose of this part is to serve this interest by establishing a uniform procedure for lenders to preserve their interests in property loaned to museums; to require lenders to notify museums of changes of address and transfers of ownership of loaned property; and to vest title to unclaimed property in the museum that holds it.

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Section 3. **Definitions.** As used in this part, the following definitions apply:

(1) "Loan" means a deposit of property not accompanied by a transfer of title to the property.

(2) "Museum" means an institution located in Montana and operated by a nonprofit corporation or a public agency primarily for educational, scientific, or aesthetic purposes, and that owns, borrows, or cares for and exhibits, studies, or catalogs property.

(3) "Property" includes any tangible object, animate or inanimate, that has intrinsic historic, artistic, scientific, or cultural value.

Section 4. **Loans for an indefinite term.** (1) If a museum accepts a loan of property for an indefinite term or for a term longer than 7 years, the museum must inform the lender in writing at the time of the loan of the provisions of this part.

(2) For the purposes of this part, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum after the specified term expires.

Section 5. **Manner of giving notice to lender.** When the provisions of this part require a museum to give notice to a lender, the museum is considered to have given notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days from the date the notice was mailed. If the museum does not have a current address for the lender or if proof of receipt is not received by the museum, notice is considered given if the museum publishes it at least once a week for 3 consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's most recent address as shown on the museum's records.

Section 6. **Notice of intent to preserve interest.** (1) The owner of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property. This notice must be in writing and must contain a description of the property adequate to enable the museum to identify the property.

(2) The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim that would be extinguished under the terms of a written loan agreement or that would otherwise be invalid or unenforceable.

(3) (a) Unless the loaned property is returned to the claimant, the museum shall retain for not less than 25 years the original or an accurate copy of any notice filed by a claimant under this section.

(b) The fact that the museum retains a notice may not be construed to mean that the notice is sufficient or accurate or that it is effective to preserve an interest in property on loan to the museum.

(4) A notice of intent to preserve an interest in property on loan to a museum satisfies the requirements of subsection (1) if it is in substantially

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the following form and contains the information and attachments described:

NOTICE TO PRESERVE AN INTEREST IN PROPERTY
ON LOAN TO A MUSEUM

Name of
Museum_____ Date___
Claimant's Name_____
Address_____
(street address; city; state; zip code)
Telephone_____
Date Property Loaned_____
Description of Property_____
_____
_____

Documentation of ownership — check the appropriate box:

☐ Legible copy of original loan receipt attached

☐ Other documentation attached

If you are not the original lender, describe the origin of your interest in the property and attach a copy of any document that creates your interest:

_____
_____
_____

I understand that I must promptly notify the museum in writing of any change of address or change in ownership of the loaned property.

I declare under penalty of false swearing that to the best of my knowledge the information contained in this notice is true.

SIGNED_____
(claimant)

OR I declare under penalty of false swearing that I am authorized to act on behalf of the claimant and am informed and believe that the information contained in this notice is true.

SIGNED_____
(claimant's representative)

Section 7. **Notice of change of address or transfer of ownership.** The owner of property on loan to a museum shall notify the museum in writing of any change of address or change in ownership of the property.

Section 8. **Conservation or disposal of loaned property.** (1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's permission if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan has become a hazard to the health and safety of the public or the museum staff and:

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(a) the museum is unable to reach the lender at the lender's last address of record; or

(b) the lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures to or disposes of property under the provisions of this section, the museum:

(a) has a lien on the property and on the proceeds of any disposition thereof for the costs incurred by the museum; and

(b) is not liable for injury to or loss of the property if it:

(i) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(ii) exercised reasonable care in the choice and application of conservation measures.

Section 9. **Notice of injury or loss.** (1) A museum shall give a lender prompt notice of any known injury to or loss of property on loan.

(2) A notice of injury or loss must contain the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

(3) If the museum is unable to give the lender the notice required by this section by mail, the museum shall publish the notice as provided in [section 5] and in addition shall include a statement containing substantially the following information:

The records of_____
(name of museum)

indicate that you have property on loan to it. Your failure to notify it in writing of a change of address or ownership may result in the loss of rights in the loaned property. See [section 7], MCA.

Section 10. **Notice of intent to terminate loan.** A museum may give the lender notice of its intent to terminate a loan made for an indefinite term or for a term longer than 7 years. A notice of intent to terminate a loan must include the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan. In addition, it must include a statement containing substantially the following information:

The records of_____
(name of museum)

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indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so, you will be considered to have donated the property to the institution. See [section 4], MCA.

Section 11. **Limitation on action against the museum.** (1) No action may be brought against a museum for damages because of injury to or loss of property loaned to the museum more than 3 years from the date the museum gives the lender notice of the injury or loss or 10 years from the date of the injury or loss, whichever occurs earlier.

(2) No action may be brought against a museum to recover property on loan if more than 3 years have passed from the date the museum gave the lender notice of its intent to terminate the loan as provided in [section 10].

(3) No action may be brought against a museum to recover property on loan if more than 25 years have passed from the date of the last written contact between the lender and the museum, as evidenced in the museum's records.

(4) A lender is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in subsections (1) through (3).

(5) A person who purchases property from a museum acquires good title to the property if the museum has acquired title to the property pursuant to subsection (4).

(6) Notwithstanding subsections (3) and (4), a lender who was not given notice that the museum intended to terminate a loan and who proves that the museum received a notice of intent to preserve an interest in loaned property within the 25 years immediately preceding the filing of an action to recover the property may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at 10% a year.

Section 12. **Uniform Unclaimed Property Act superseded.** The provisions of [this part] supersede the provisions of Title 70, chapter 9, parts 1 through 3, except that at its option a museum may report property that has been on loan unclaimed by its owner for more than 7 years to the department of revenue for disposition as provided in Title 70, chapter 9, part 3.

Section 13. **Codification instruction.** (1) Sections 1 through 12 are intended to be codified as a separate part in Title 22, chapter 3.

(2) Section 12 is also intended to be codified as an integral part of Title 70, chapter 9, parts 1 through 3.

Section 14. **Applicability.** This act applies only to property loaned to a museum on or after the effective date of this act or to existing loaned property with a market value of $1,000 or less at the time of disposal.

Approved April 25, 1985.

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CHAPTER NO. 631

[SB 361]

AN ACT PROVIDING A COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT ALLOWANCES AND SURVIVORSHIP ALLOWANCES FOR CERTAIN MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THEIR BENEFICIARIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost-of-living increase.** (1) For the purpose of this section:

(a) "Y" equals a member's years of creditable service not to exceed 30; and

(b) "A" equals a member's or his beneficiary's monthly service or disability retirement allowance or survivorship allowance.

(2) Except as provided in subsection (3), effective July 1, 1985, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system retired before July 1, 1984, or his beneficiary must be increased by an amount equal to $\$25Y^2/A$; however, no allowance may be increased by more than $3 per year of service or less than $1 per year of service.

(3) The increase provided for in this section does not apply to a monthly service or disability retirement allowance or survivorship allowance that is $1,000 or more.

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to section 1.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 25, 1985.

CHAPTER NO. 632

[HB 490]

AN ACT TO DELETE THE REQUIREMENT THAT THE INSTITUTIONAL INDUSTRIES PROGRAM REVERT ALL UNOBLIGATED FUNDS OVER A $50,000 ENDING-FUND BALANCE TO THE STATE GENERAL FUND AT THE END OF EACH BIENNIUM; AMENDING SECTION 53-1-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-302, MCA, is amended to read:

"53-1-302. Disposition of receipts from sale of goods. Receipts from the sale of goods produced or manufactured by an institution shall be

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deposited in the internal service fund for the use of the industries program of the institution."

Section 2. **Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 25, 1985.

CHAPTER NO. 633

[HB 676]

AN ACT TO AMEND THE MONTANA HAZARDOUS WASTE ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES SETTING REQUIREMENTS FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM OR OTHER HAZARDOUS SUBSTANCES; REQUIRING TANK OWNERS OR OPERATORS TO REPORT LEAKS; AMENDING SECTIONS 75-10-403, 75-10-405, 75-10-409, AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

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(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(11) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(12) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(13) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(14) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(16) "Underground storage tank":

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(a) means, except as provided in subsections (16)(b)(i) through (16)(b)(viii):

(i) any one or combination of tanks (including connected underground pipes) used to contain a regulated substance, the volume of which (including the volume of the connected underground pipes) is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground.

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (16)(b)(ii)(A) or (16)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (16)(b)(i) through (16)(b)(vii)."

Section 2. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** *(1)* The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

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(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(f) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(g) requirements for registration of generators and transporters;

(h) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators; and

(i) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, *except that the department may adopt requirements for the prevention of leakage from underground storage tanks, including:*

(a) reporting by owners and operators;

(b) financial responsibility;

(c) release detection, prevention, and correction; and

(d) standards for design, construction, and installation."

Section 3. Section 75-10-409, MCA, is amended to read:

"**75-10-409. Compliance monitoring and reporting — underground storage tank leak report.** *(1)* The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

(3) If an owner or operator of an underground storage tank discovers or is provided with evidence that the tank may have leaked, he must immediately notify the department that a leak may exist."

Section 4. Section 75-10-532, MCA, is amended to read:

"**75-10-532. Disposition of moneys collected.** All moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for:

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(1) the control, collection, recycling, and disposal of junk vehicles and component parts;

(2) implementation by the department of health and environmental sciences during the 1987 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with 75-10-601 through 75-10-604, and the Montana Hazardous Waste Act in accordance with 75-10-401 through 75-10-421, up to an amount not exceeding $58,690; and

(3) implementation by the department of health and environmental sciences during the 1985 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6, up to an amount not exceeding $220,000."

Section 5. **Saving clause.** This act does not affect penalties that were incurred or proceedings that were begun before the effective date of this act.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1985.

CHAPTER NO. 634

[HB 815]

AN ACT TO PROVIDE FUNDS FOR AN AGRICULTURE IN MONTANA SCHOOLS PROGRAM THROUGH AN INCOME TAX RETURN CHECKOFF; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Agriculture in Montana schools program account — administration.** (1) There is an agriculture in Montana schools program account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under [section 2] must be deposited in the account.

(3) Money in the account must be used by the department of agriculture to provide funding for developing and presenting, through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and

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nationwide, an educational program that will provide young people with a better understanding of the crucial role of agriculture in all aspects of society and of how Montana agriculture relates to the rest of the world.

Section 2. **Voluntary checkoff for agriculture in Montana schools program.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the agriculture in Montana schools program by marking an appropriate box on the state income tax return.

(2) The department of revenue shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the agriculture in Montana schools program. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute _____ $5, _____ $10, _____ $20, or _____(specify an amount) of your tax refund, or add such amount to your tax payment, to fund the agriculture in Montana schools program. If a joint return, check the appropriate blank if your spouse wishes to designate _____ $5, _____ $10, _____ $20, or _____(specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the agriculture in Montana schools program account established by [section 1] after the department of revenue has deducted the amount necessary for the department to administer this section.

Section 3. **Termination date.** This act terminates July 1, 1987.

Approved April 25, 1985.

CHAPTER NO. 635

[SB 325]

AN ACT ESTABLISHING A PERMISSIVE STATEWIDE EMERGENCY TELEPHONE SYSTEM; PROVIDING FOR A STATE PLAN; PROVIDING FOR TELEPHONE INDUSTRY COORDINATION; PROVIDING FOR COIN TELEPHONE CONVERSION; PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A TELEPHONE FEE; AMENDING SECTION 35-18-503, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Account" means the 9-1-1 emergency telecommunications account established in [section 16].

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(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means any event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (7)(a).

(7) "Local government" means any city, county, or political subdivision of the state and its agencies.

(8) "Minimum 9-1-1 service" means a telephone service meeting the standards established in [section 3] that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

(9) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(10) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(11) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

(12) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(13) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and which may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

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(14) "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays such information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(15) "Subscriber" means an end user who receives telephone exchange access services.

(16) "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such a request to an appropriate public safety answering agency or other provider of emergency services.

Section 2. **Emergency telephone system requirements.** (1) Every public and private safety agency in this state may establish or participate in an emergency telephone system.

(2) An emergency telephone system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.

Section 3. **Department of administration duties and powers.** (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from minimum 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system;

(c) establish criteria for evaluating plans;

(d) monitor implementation of approved plans for compliance with the plan and use of funding; and

(e) report biennially to the legislature the progress made in implementing a statewide emergency telephone system.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services

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organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

Section 4. **Submission of preliminary plans for 9-1-1 jurisdictions — review — cost estimates.** (1) A 9-1-1 jurisdiction may submit a preliminary plan for establishing an emergency telephone system in accordance with [section 2] to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The department shall review the preliminary plan for compliance with [section 2] and rules adopted pursuant to [section 3] and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.

(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan.

Section 5. **Submission and approval of final plans — exception.** (1) A 9-1-1 jurisdiction shall submit a proposed final plan for establishing an emergency telephone system pursuant to [section 2] within 1 year from receipt of the department's approval of its preliminary plan to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) In addition to other matters required by [section 2], the final plan must include a description of all capital and recurring costs for the proposed emergency 9-1-1 telephone system.

(3) The department shall determine whether the final plan complies with [section 2] and rules adopted pursuant to [section 3]. Subject to [section 6], if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

Section 6. **Requirement for approval of final plan — department to insure compliance.** The department may not approve the preliminary or final plan of a 9-1-1 jurisdiction unless the plan is accompanied by a

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written approval from the governing bodies of all participating public and private safety agencies included in the 9-1-1 jurisdiction.

Section 7. **Agreements among safety agencies for rendering emergency services.** (1) Public or private safety agencies sharing common boundaries may enter into agreements which provide that an emergency unit dispatched by an emergency telephone system established in accordance with [section 2] must render emergency services without regard to jurisdictional boundaries.

(2) A public safety agency with jurisdictional responsibilities must in all cases be notified by the public safety answering point of a request for service in the agency's jurisdiction.

Section 8. **Pay phones to be converted to allow emergency calls without charge.** Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to [section 2] must convert every pay station telephone to permit dialing 9-1-1 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational.

Section 9. **Fee imposed for telephone exchange access services.** (1) Except as provided in [section 10], a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services.

(2) The subscriber paying for exchange access line services is liable for the fee imposed by this section.

(3) The provider shall collect the fee. The amount of the fee collected by the provider is considered payment by the subscriber for that amount of fee.

(4) Any return made by the provider collecting the fee is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

Section 10. **Exemptions from fee imposed.** The fee imposed by [section 9] does not apply to:

(1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or

(2) amounts paid by depositing coins in a public telephone.

Section 11. **Provider required to maintain record of collections.** Every provider responsible for the collection of the fee imposed by [section 9] shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

Section 12. **Deadlines for filing returns.** (1) The provider collecting the fee under [section 9] must file a return with the department of revenue

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on or before the last day of the month following the end of each calendar quarter, reporting the amount of fee due on exchange access line services during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-202.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the exchange access service fee during the quarter.

(4) As used in this section, the "net amount billed for the exchange access service fee" equals the gross amount billed for such service, less adjustments for uncollectable accounts, refunds, incorrect billings, and other appropriate adjustments.

Section 13. **Refund to provider for excess payment of fee.** If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest thereon at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. No refund may be made to a provider who fails to claim the refund within 2 years after the due date for filing of the return with respect to which the claim for refund relates.

Section 14. **Provider required to hold fee in trust for state.** (1) Every provider required to collect the fee imposed by [section 9] holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by [section 12].

(2) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee, the department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

Section 15. **Provider considered a taxpayer under provisions for fee.** Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to [sections 9 through 14] the same as if the fee were a tax imposed upon or measured by net income. All such provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. As to any amount collected and required to be remitted to the department of revenue, the fee is considered a tax upon the provider required to collect it and that provider is considered a taxpayer.

Section 16. **Establishment of emergency telecommunications account.** A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by

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the department of revenue pursuant to [section 9] must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to [section 13], the balance of the account is statutorily appropriated [as provided in section 2 of House Bill No. 12] to the department to be used for the purposes described in [sections 2 through 8].

Section 17. **Distribution of account by department.** (1) The department shall make quarterly distributions of the entire account beginning on April 1, 1987. The distributions must be made for the following:

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out [this act]. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under [this act]. The amount paid to the department may not exceed 7% of the account on the date of distribution or actual expenses incurred, whichever is less.

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the fee imposed by [section 9];

(ii) modification of central office switching and trunking equipment for emergency telephone service only; and

(iii) conversion of pay station telephones required by [section 8].

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs incurred in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be distributed to cities within a 9-1-1 jurisdiction that have an approved final plan and to counties within a 9-1-1 jurisdiction that have an approved final plan on a per capita basis. However, each county must receive a minimum of 1% of the balance of the counties' share of the account. Cities and counties shall distribute amounts received to 9-1-1 jurisdictions within their jurisdiction. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from each city or county involved.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in [section 18], the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until such time as the department determines that the jurisdiction is complying with the approved plan and fund usage limitations.

Section 18. **Limitation on use of funds.** Money received under subsection (3) of [section 17] may be used only to pay for installing, operating,

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and improving an emergency telephone system using 9-1-1. Money not necessary for immediate use may be invested by the city or county. The income from the investments shall be used only for the purposes described in this section.

Section 19. Section 35-18-503, MCA, is amended to read:

"35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service is supplied within the state but, *except as provided in [section 9]*, shall be exempt from all other excise and income taxes of whatsoever kind or nature."

Section 20. **Coordination.** If this act and House Bill No. 12 are both passed and approved, subsection (3) of section 2 of House Bill No. 12 is amended to include a reference to section 16 of this act, and the bracketed language in section 16 of this act "[as provided in section 2 of House Bill No. 12]" is effective. If House Bill No. 12 is not passed and approved, such bracketed language in section 16 of this act is void.

Section 21. **Effective dates.** Sections 3 and 11 are effective July 1, 1986, for the purpose of adopting rules to implement this act. The remainder of this act is effective January 1, 1987.

Approved April 25, 1985.

CHAPTER NO. 636

[HB 607]

AN ACT TO ALLOW A PRODUCTION INCENTIVE TAX CREDIT TO THE COAL SEVERANCE TAX ON INCREMENTAL PRODUCTION OF COAL MEETING CERTAIN REQUIREMENTS; LIMITING THE PERIOD DURING WHICH PRODUCTION MAY QUALIFY FOR THE CREDIT; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the coal industry has claimed that Montana's 30% coal severance tax limits sales and production of Montana coal; and

WHEREAS, by providing a "window of opportunity", the Legislature challenges the coal industry to find new markets and customers for Montana coal; and

WHEREAS, the present tax base on current Montana coal production must be preserved in order to maintain existing state revenues and services.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This section and sections 3 through 6] may be cited as the "New Coal Production Incentive Tax Credit Act of 1985".

Section 2. Section 15-35-102, MCA, is amended to read:

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"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) "Base consumption level" for a purchaser means the greater of:

(a) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(b) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(3) "Base production level" for a coal mine operator means the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984.

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

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(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" or "surface mining" is defined in 82-4-203.

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 3. **New coal production incentive tax credit allowed — application limited.** (1) A coal mine operator is entitled to a new coal production incentive tax credit of 33⅓% of the tax imposed under 15-35-103 on any incremental production produced and sold during calendar years 1985 and 1986.

(2) A coal mine operator is entitled to a new coal production incentive tax credit of 33⅓% of the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3), if the incremental production resulted from coal purchases under:

(a) an existing agreement which was extended between January 1, 1985, and June 30, 1987, for at least a 5-year period; or

(b) a new agreement that was executed between January 1, 1985, and June 30, 1987.

(3) No credit may be claimed for coal produced prior to January 1, 1985.

Section 4. **Calculation and application of credit.** (1) The amount of new coal production incentive tax credit that a coal mine operator may claim against the tax imposed in 15-35-103 is calculated by:

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(a) determining the incremental production for each of his qualified purchasers that was produced during a calendar year;

(b) determining the arithmetic average severance tax per ton calculated prior to application of the credit on coal sold to each qualified purchaser during the calendar year;

(c) multiplying the incremental production for a calendar year for a purchaser by the average severance tax per ton for that purchaser and multiplying the total by 33 ⅓%; and

(d) totaling the amount so calculated for all qualified purchasers.

(2) When filing the quarterly statement required in 15-35-104, a coal mine operator may claim against the coal severance tax calculated for that quarter an amount equal to 25% of the new coal production incentive tax credit allowed on incremental production that occurred during the previous calendar year.

(3) If in any calendar year a purchaser exceeds his base consumption level and he has purchased from more than one Montana coal mine operator during the year, the credit on the incremental production must be divided among the operators on a pro rata basis. To determine each coal mine operator's pro rata share of the tax credit, each operator shall divide his incremental production by the sum of all coal mine operators' incremental production for that purchaser and multiply the quotient by the purchases in excess of the base consumption level for that purchaser.

(4) Neither a coal mine operator nor a purchaser is entitled to a direct payment for the credit allowed in [section 3]. A credit terminates if not taken during the year following the year in which the incremental production occurred.

(5) Each coal mine operator must reduce the delivered price of coal sold to each qualified purchaser by an amount equal to the credit received on incremental production sold to that purchaser.

Section 5. **Reporting requirements for credit — duty of department.** (1) Every Montana coal mine operator must provide to the department:

(a) on or before April 30, 1985, a list showing the amount of coal produced and sold in calendar years 1983 and 1984 to every purchaser, including purchasers who obtained coal from the coal mine operator through a broker; and

(b) with the quarterly statement required by 15-35-104, a list of the number of tons produced and sold to every purchaser during the quarter and the severance tax calculated prior to the application of the credit on these tons.

(2) To be eligible for the tax credit provided for in [section 3], a coal mine operator must furnish to the department:

(a) on or before April 30, 1985, copies of all existing coal sales agreements;

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(b) with the quarterly statement required by 15-35-104, a copy of any new coal sales agreements or extensions of existing agreements executed during the quarter;

(c) on or before January 31 of each year:

(i) a list of incremental production for all qualified purchasers during the previous calendar year;

(ii) a written statement from each qualified purchaser verifying the volume of coal purchased in that year from all Montana coal mine operators; and

(iii) the necessary information on incremental production purchased through a broker to verify that such incremental production did not cause a reduction in the base consumption level of any other purchaser of Montana coal; and

(d) any other data, reports, evidence, or production data that may be necessary for the department to determine whether a purchaser is a qualified purchaser and the base consumption level for each purchaser.

(3) By July 1, 1985, the department shall prepare and publish for informational purposes only an unaudited compilation of the base production level for each coal mine operator and a compilation of the base consumption level for each purchaser.

(4) Any coal mine operator or purchaser may, for the purpose of determining the eligibility of coal production for the new production incentive tax credit, file with the department a petition for a declaratory ruling as provided in 2-4-501. The department shall issue a ruling on the petition within 90 days of the date the petition was filed with the department.

Section 6. **Returns and taxpayer information open to public inspection — certain exceptions.** (1) All information filed with the department in accordance with [section 5] is public record and open to public inspection, except the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)].

(2) Except during proceedings before the state tax appeal board pursuant to 15-2-201, the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)] are open to inspection only upon the order of the governor, under rules to be prescribed by the department, or upon order of a court of competent jurisdiction.

Section 7. Section 15-35-103, MCA, is amended to read:

"15-35-103. Severance tax — rates imposed — exemptions. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

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Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

"Value" means the contract sales price.

(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

(3) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(4) A new coal production incentive tax credit may be claimed on certain coal as provided in [section 3]."

Section 8. **Extension of rulemaking authority.** The existing authority of the department of revenue under 15-35-122 to adopt rules necessary for the administration of [this act] is extended to the provisions of [this act]. Such rulemaking may begin upon passage and approval of [this act].

Section 9. **Coal tax oversight subcommittee to monitor new coal production incentive tax credit.** (1) The coal tax oversight subcommittee established in 5-18-201 shall review the effects of the new coal production tax credit provided in [section 3] during the 1985-86 legislative interim. This review shall include but not be limited to:

(a) the effect of the tax credit on:

(i) coal production generally;

(ii) the number and term of new agreements and extensions of existing agreements;

(iii) the retention or increase of Montana's present level of production;

(iv) the current and future markets for Montana coal in and out of the state;

(v) the physical, social, and economic environment;

(b) the extent to which the tax credit is claimed by or awarded to coal mine operators who are not entitled to it; and

(c) any other factors which may affect either present or future severance tax revenues to the state of Montana.

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(2) The coal tax oversight subcommittee shall investigate and conduct periodic hearings for the purpose of gathering information on (1)(a) through (1)(c) above.

(3) The coal tax oversight subcommittee shall report its findings and recommendations to the revenue oversight committee during the interim, and the revenue oversight committee shall keep the legislature informed of the subcommittee's findings and present a report and recommendations to the legislature.

Section 10. **Nonseverability and effect of invalidity.** Each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid. If a part of [this act] is declared invalid, the tax credit provided for in [this act] does not apply to any coal produced in Montana after the effective date of any such court decision.

Section 11. **Codification instruction.** Sections 1 and 3 through 6 are intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to sections 1 and 3 through 6.

Section 12. **Effective and applicability dates.** (1) [This act] is effective on passage and approval.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences after December 31, 1984.

Approved April 25, 1985.

CHAPTER NO. 637

[SB 77]

AN ACT CHANGING TO JULY 1 THE DEADLINE FOR SUBMITTING A PROPOSAL FOR ACQUISITION OF PARK PROPERTY PURCHASED WITH INCOME FROM THE COAL TAX PARKS AND CULTURAL TRUST FUND; AMENDING SECTION 23-1-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-108, MCA, is amended to read:

"23-1-108. Acquisition of certain state parks, monuments, or historical sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife, and parks by *July* 1 of the year preceding the convening of a legislative session.

(2) The fish and game commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas,

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state monuments, or state historical sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

Approved April 30, 1985.

CHAPTER NO. 638

[SB 178]

AN ACT ASSIGNING AUTHORITY TO THE LEGISLATIVE COUNCIL TO SET AND COLLECT FEES FOR PURCHASE OF THE PROCEEDINGS OF THE LEGISLATURE; ESTABLISHING BROADER AUTHORITY TO DETERMINE WHAT IS INCLUDED IN THE PROCEEDINGS OF THE LEGISLATURE; AND AMENDING SECTIONS 5-11-211 THROUGH 5-11-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-211, MCA, is amended to read:

"5-11-211. Definitions. For the purposes of this part, the following definitions apply:

(1) "Person" means any person, firm, corporation, or association.

(2) "Proceedings of the legislature" means status sheets, daily journals, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto, *together with such other related documents as the legislative council may choose to include.*

(3) "One complete set" means one copy of each item of the proceedings of a session, regular or special, of the legislature.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature."

Section 2. Section 5-11-212, MCA, is amended to read:

"5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular session of the legislature may be purchased from the *legislative council* for the amount prescribed *by the council.* Upon receipt of payment, the executive director of the council shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed *by the council* for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments thereto may be purchased from the legislative council for a price varying with the length of the document as prescribed *by the council.*

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(4) Single copies of status sheets or status of proceedings may be purchased from the legislative council for a price per copy as prescribed *by the council.* A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative council shall account for all funds collected under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund."

Section 3. Section 5-11-213, MCA, is amended to read:

"5-11-213. Exclusions. Representatives of general circulation newspapers, radio, and television who shall have first registered with the *executive director of the legislative council* shall be exempt from 5-11-212 and shall receive one complete set of the proceedings of the legislature without charge."

Approved April 30, 1985.

CHAPTER NO. 639

[SB 204]

AN ACT INCLUDING COUNTY PARK AND RECREATIONAL COMPLEX FUNDING WITH FUNDING FOR CERTAIN COUNTY CULTURAL, SOCIAL, AND RECREATIONAL FACILITIES; PROVIDING THAT THE 2-MILL PROPERTY TAX FUNDING FOR SUCH PARKS AND FACILITIES MAY BE IMPOSED OR REJECTED IF INITIATED BY PETITION AND APPROVED BY THE ELECTORATE; PROVIDING AN EXCEPTION FOR CURRENTLY LEVIED TAXES; AMENDING SECTIONS 7-16-2102 AND 7-16-2103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2102, MCA, is amended to read:

"7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities. (1) The board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax, not to exceed 2 mills on each dollar of the taxable valuation for any one year, for the purpose of maintaining, operating, and equipping *parks, cultural facilities, and any* county-owned civic center, youth center, recreation center, *recreational complex,* or any combination thereof.

(2) (a) The board of county commissioners must submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting such an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question will be submitted substantially as follows:

☐ *FOR the imposition (or continued imposition) of a property tax, not to exceed 2 mills, for county parks and for county-owned cultural, social, and recreational facilities.*

☐ *AGAINST the imposition (or continued imposition) of a property tax for county parks and for county-owned cultural, social, and recreational facilities.*

(c) The board of county commissioners shall levy such a tax for the 2 subsequent fiscal years, if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes shall apply to the collection of the tax provided herein."

Section 2. Section 7-16-2103, MCA, is amended to read:

"7-16-2103. Establishment of fund. (1) All funds derived from the tax authorized by 7-16-2102 constitute a separate fund deposited with the county treasurer. *The fund* shall not be used for any purposes except *for county parks and any* civic center, *cultural facility,* youth center, recreation center, *recreational complex,* or any combination thereof.

(2) All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county."

Section 3. **Exception for levy currently authorized.** Any property tax levied under the provisions of 7-16-2102(1) before [the effective date of this act] continues to be authorized, and the amendments to 7-16-2102 enacted in section 1 of this act do not apply to such levies.

Approved April 30, 1985.

CHAPTER NO. 640

[SB 349]

AN ACT CLARIFYING AND CONSOLIDATING THE BONDING AUTHORITY OF THE MONTANA ECONOMIC DEVELOPMENT BOARD; AUTHORIZING THE BOARD TO GUARANTEE CERTAIN BONDS AND LOANS; ESTABLISHING A LOAN LOSS RESERVE FUND; ALLOWING THE BOARD TO SET TERMS TO FINANCE CERTAIN PROJECTS; AMENDING SECTIONS 17-5-1505, 17-5-1506, 17-6-308, 17-6-311, AND 17-6-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1505, MCA, is amended to read:

"17-5-1505. Financing programs of the board. (1) The board may:

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(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board;

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state; *or*

(d) finance projects located in the state upon such terms and conditions as determined by the board.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement."

Section 2. Section 17-5-1506, MCA, is amended to read:

"17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges,

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be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds *secured under 17-5-1515 and 17-5-1519* outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed *$75* million."

Section 3. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. *(1)* The Montana in-state investment fund must be invested in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment authorized by rules adopted by the board. *For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.*

(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed $3,000,000 with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes."

Section 4. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. *(1) Except as provided in subsection (2), no* investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a

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debt to the Montana in-state investment fund the total current accumulated amount of which exceeds 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund.

(2) Subsection (1) does not limit the board's authority to guarantee loans or bonds or make loans to the capital reserve account and guaranty fund as provided in 17-6-308(2) and (3)."

Section 5. Section 17-6-315, MCA, is amended to read:

"**17-6-315. Service charges — loan loss reserve fund.** *(1)* The board shall by rule establish reasonable service fees that may be charged on loans made from the Montana in-state investment fund.

(2) For both coal tax loans and industrial development bond guaranties the board may deposit service charges, and up to 0.25% of the interest on coal tax loans, to a loan loss reserve fund. The board shall use the loan loss reserve fund to protect the in-state investment fund from losses."

Section 6. **Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

CHAPTER NO. 641

[SB 452]

AN ACT CREATING THE "EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT"; REQUIRING EMPLOYERS TO PROVIDE EMPLOYEES WITH INFORMATION CONCERNING HAZARDOUS CHEMICALS IN THE WORKPLACE; REQUIRING COUNTY CLERK AND RECORDERS TO MAINTAIN AND PROVIDE PUBLIC ACCESS TO THIS INFORMATION; PROVIDING FOR INSPECTIONS BY LOCAL FIRE CHIEFS; SPECIFYING RIGHTS OF EMPLOYEES; PROVIDING TRADE SECRET CONFIDENTIALITY IN CERTAIN CIRCUMSTANCES; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be known and cited as the "Employee and Community Hazardous Chemical Information Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard

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Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under [this act]; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in his workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in [section 3]:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard and which has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

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(12) "Local fire chief" means:

(a) the chief of the municipal fire department or his agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or his agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 C.F.R. 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under [this act] or under subsection (e)(1)(i) of the OSHA standard.

Section 3. **Applicability.** (1) The provisions of [this act] do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

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(f) sealed containers of hazardous chemicals during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals.

(2) Employers operating the following workplaces are in compliance with [this act] if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of [sections 8, 9(5) through (7), and 12] are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; or

(d) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of [this act] do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing such hazardous chemicals must comply with all provisions of [this act].

Section 4. **Relationship to OSHA standard.** (1) Manufacturing employers and distributors that are regulated by and complying with the provisions of the OSHA standard are exempt from the provisions of [this act], except for [sections 6, 7, 9, and 10].

(2) Nonmanufacturing employers that adopt and comply with the provisions of the OSHA standard are exempt from the provisions of [this act], except for [sections 6, 7, 9, and 10].

Section 5. **Notice to employees.** Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under [this act].

Section 6. **Workplace chemical list.** (1) Each employer shall compile and maintain a workplace chemical list that must contain the following information for each hazardous chemical present in the workplace:

(a) except as provided in [section 11], all generally used common names of any hazardous chemical present in the workplace, cross-referenced to the chemical name; and

(b) the work area in which the hazardous chemical is normally stored or used.

(2) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

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(3) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(4) The workplace chemical list must be updated as necessary but not less than annually.

Section 7. **Material safety data sheets.** (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

Section 8. **Labels.** (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in [section 11].

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

Section 9. **Emergency and community information.** (1) Except as provided in subsection (2), an employer normally having hazardous chemicals in the workplace of his employees shall submit the following information to the clerk and recorder of the county in which the workplace is located:

(a) a copy of the most current material safety data sheet certified by the employer for each hazardous chemical in the workplace;

(b) an acknowledged copy of each new annual workplace chemical list; and

(c) a list acknowledged by the employer of the names or titles and telephone numbers of knowledgeable representatives of the employer or the chemical manufacturer who can be contacted for further information or in case of an emergency.

(2) A county clerk and recorder shall record and update as necessary an index listing each hazardous chemical for which a material safety data sheet has been recorded in the county. The index must include the name of the employer who recorded the material safety data sheet. No employer shall be required to record a material safety data sheet for any hazardous

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chemical for which a material safety data sheet has already been recorded by any employer in the county.

(3) The county clerk and recorder shall record the information provided under subsection (1). The county clerk and recorder shall index the information provided under subsection (1) by workplace name and all entries for a workplace must be grouped together in the index. The index must not be combined with any other type of index.

(4) All information submitted under subsection (1) is public information and must be available at the office of the county clerk and recorder during normal working hours to any person for inspection and copying at the expense of the person requesting copies.

(5) The local fire chief shall inspect all information maintained by the county clerk and recorder on workplace hazardous chemicals.

(6) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with [this act]. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(7) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of [this act] or any other law pertaining to hazardous chemicals or fire safety.

(8) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

Section 10. **Employee rights.** (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by [this act], may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from his employer, as provided in [section 12] or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

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(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) No employer shall discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises his rights, testifies, or assists others in exercising their rights or duties under [this act].

(5) A waiver by an employee of the benefits, rights, or requirements of [this act] is against public policy and is void. An employer's request or requirement that an employee waive any rights under [this act] as a condition of employment is a violation of [this act].

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under [this act].

Section 11. **Trade secret confidentiality.** (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person

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making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

Section 12. **Employee education program.** (1) Each employer shall provide, at least annually, an education and training program for all his employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

Section 13. **Departmental information program.** (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under [this act].

(2) The department may develop an education and training program to assist employers in complying with the provisions of [section 10].

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

Section 14. **Construction of act.** The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer,

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or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

Section 15. **Complaints, investigation, and penalties.** (1) An employee in a workplace covered by the OSHA standard who believes his employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of [this act] may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of [this act] and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of [this act] is guilty of a misdemeanor. Each day of violation is a separate offense.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Effective date.** This act is effective November 25, 1985.

Approved April 30, 1985.

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CHAPTER NO. 642

[SB 462]

AN ACT REVISING ALLOWABLE DEDUCTIONS IN DETERMINING OIL AND GAS NET PROCEEDS FOR PROPERTY TAX PURPOSES; ESTABLISHING STARTING POINTS FOR THE AMORTIZATION OF DRILLING COSTS AND CERTAIN CAPITAL EXPENDITURES; AMENDING SECTIONS 15-23-603 AND 15-23-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all *money* expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all *money* expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) that portion of all money, including costs of insurance, expended for the acquisition and operation of any vehicle used in the operation and development of the well which bears the same ratio to all money expended for the acquisition and use of the vehicle during the year covered by the statement as the number of miles the vehicle is used in operation and development of the well during the year covered by the statement bears to the total miles the vehicle is used during the year covered by the statement;

(e) all *money* expended for fire insurance, workers' compensation insurance, *liability insurance, and casualty insurance directly attributable to the operation and development of the well* and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(f) all money expended for any performance or indemnity bonds required by the laws of this state or the rules of any state agency, with respect to the well for which the net proceeds are being calculated; and

(g) 70% of the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or

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removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof."

Section 2. Section 15-23-604, MCA, is amended to read:

"15-23-604. Deduction of drilling costs and capital expenditures. *(1) Unless an operator or producer proceeds under subsection (2), the* department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow 10% of such cost each year for a period of 10 years beginning:

(a) after the 3-year exemption period allowed in 15-36-121 for qualified *natural gas* wells;

(b) with the year natural gas from a nonqualified natural gas well is first placed into a natural gas distribution system; or

(c) with the year the pumping unit is installed on a crude oil well.

(2) The operator or producer may elect to amortize the cost over a period of 2 years if the well is less than 3,000 feet deep."

Section 3. **Extension of authority.** Any existing authority of the department of revenue or the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1985.

Approved April 30, 1985.

CHAPTER NO. 643

[HB 3]

AN ACT ALLOWING AN INCREASE IN THE CHARGE TO CLASSIFIED FOREST LANDOWNERS FOR FIRE PROTECTION UP TO $14; LIMITING ASSESSMENTS TO NO MORE THAN ONE-THIRD OF THE TOTAL APPROPRIATED BY THE LEGISLATURE FOR FOREST FIRE PROTECTION; AMENDING SECTIONS 76-13-201 AND 76-13-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-201, MCA, is amended to read:

"76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the

starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than *17* cents per acre per year *except that the department shall make a minimum assessment of up to $14* per owner per year in each protection district *as necessary to yield the amount of money provided for in 76-13-207.* The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent."

Section 2. Section 76-13-207, MCA, is amended to read:

"76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received *from such landowners to no greater than one-third of* the amount specified in the *appropriation.*

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected."

Section 3. **Extension of authority.** Any existing authority of the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved April 30, 1985.

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CHAPTER NO. 644

[HB 44]

AN ACT AUTHORIZING THE COURTS TO REQUIRE PAYMENT OF A VICTIM'S COUNSELING COSTS BY A DEFENDANT WHO IS FINANCIALLY ABLE AND WHO IS CONVICTED OF THE OFFENSE OF INCEST OR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-5-503 AND 45-5-507, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) *(a)* If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial judge shall order a hearing

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out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (5).

(7) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim."

Section 2. Section 45-5-507, MCA, is amended to read:

"**45-5-507. Incest.** (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 3. **Applicability.** This act applies to offenses committed on or after October 1, 1985.

Approved April 30, 1985.

CHAPTER NO. 645

[HB 108]

AN ACT TO INCREASE THE AMOUNT PAID TO A COUNTY BY THE UNITED STATES OR THE STATE OF MONTANA TO HOLD A PRISONER COMMITTED TO A COUNTY JAIL BY THE UNITED STATES OR THE MONTANA HIGHWAY PATROL; AMENDING SECTIONS 7-32-2206 AND 7-32-2209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2206, MCA, is amended to read:

"**7-32-2206. Confinement of federal prisoners.** (1) The sheriff must receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States until

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he is discharged according to law, as if he had been committed under process issued under the authority of this state.

(2) Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States, through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined. Such agreement shall be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum *as may be agreed to* for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

(3) A sheriff to whose custody a prisoner is committed as provided in this section is answerable for his safekeeping in the courts of the United States, according to the laws thereof."

Section 2. Section 7-32-2209, MCA, is amended to read:

"7-32-2209. Expenses of persons committed to jail by highway patrol bureau. In the event a person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall, upon claim presented for the county by the clerk and recorder, pay into the county treasury of the county the sum of *$20* per day *or the average per diem cost of holding a prisoner in confinement, whichever is less,* for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose."

Approved April 30, 1985.

CHAPTER NO. 646

[HB 114]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO SWIMMING POOLS AND BATHING PLACES; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY SET SAFETY STANDARDS FOR PUBLIC SWIMMING POOLS AND BATHING PLACES; AMENDING SECTIONS 50-53-101 THROUGH 50-53-103 AND 50-53-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-101, MCA, is amended to read:

"50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health *and safety.*"

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Section 2. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(3) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(4) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use."

Section 3. Section 50-53-103, MCA, is amended to read:

"50-53-103. Sanitation and safety rules. (1) The department shall adopt rules *setting standards to ensure* sanitation *and safety* in public swimming pools and public bathing places to protect public health *and safety.*

(2) *Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code and filed with the secretary of state pursuant to 50-60-204.*"

Section 4. Section 50-53-108, MCA, is amended to read:

"50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health *and safety.*"

Section 5. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 7. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

CHAPTER NO. 647

[HB 127]

AN ACT TO GENERALLY REVISE THE LAW CONCERNING PRIVATE SECURITY PATROLMEN AND INVESTIGATORS; PROVIDING COVERAGE FOR SECURITY ALARM SYSTEMS; REMOVING THE EXEMPTION FOR CHARITABLE INSTITUTIONS; DELETING RESIDENCY REQUIREMENTS; CLARIFYING REQUIREMENTS FOR QUALIFYING AGENTS AND RESIDENT MANAGERS; REMOVING EXEMPTIONS FROM REGISTRATION AS AN ARMED GUARD OR INVESTIGATOR; PROVIDING QUALIFICATIONS FOR UNARMED PRIVATE INVESTIGATORS; AMENDING SECTIONS 37-60-101, 37-60-105, 37-60-202, AND 37-60-302 THROUGH 37-60-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another

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any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrolmen and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who *installs or maintains a security alarm system,* undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities *or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.*

(11) "Licensee" means a person licensed under this chapter.

(12) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(13) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(14) "Private security guard" means an individual employed to protect a person or property or both a person and property from criminal acts and whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

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(15) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(16) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(17) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(18) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(19) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(20) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear, carry, possess, or have access to a firearm in the performance of those duties."

Section 2. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. This chapter does not apply to:

(1) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and *is guarding inside a structure which at the time is not open to* the public;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

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(4) an attorney at law in performing his duties as such attorney at law, *a paralegal or legal assistant employed by an attorney at law, or a law student who is serving a legal internship*;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10)*; or*

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly employed."

Section 3. Section 37-60-302, MCA, is amended to read:

"**37-60-302. Qualifying agent and resident manager required — substitution.** (1) *Any person not a resident of this state who applies* for a license under this chapter shall, before application to the board, appoint for the duration of the license *a qualifying agent and* a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under his direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time."

Section 4. Section 37-60-303, MCA, is amended to read:

"**37-60-303. License qualifications.** (1) An applicant for a license to act as a contract security company or a proprietary security organization shall submit evidence under oath that he:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

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(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with such other experience qualifications as may be set by the rules of the board.

(2) Every applicant for a license to act as a private investigator shall submit evidence under oath that he:

(a) is a citizen of the United States;

(b) is at least *21* years of age;

(c) has at least a high school education or its equivalent;

(d) has not been convicted of a felony or a crime involving moral turpitude;

(e) has not been dishonorably discharged from any branch of the United States military service;

(f) is of good moral character; and

(g) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business; *or*

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; *or*

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government.

(3) Up to one-half of the experience required by (2)(g) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(4) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(5) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require."

Section 5. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, or a private investigator;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send *written notification* to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located *that an application has been submitted.*"

Section 6. Section 37-60-305, MCA, is amended to read:

"**37-60-305. Armed guards and investigators — registration requirements.** (1) Except as provided in 37-60-105 and 37-60-308, no person may *be employed as* an armed private security guard or an armed private investigator in this state without having first been registered with the board and issued a registration card in the manner prescribed by this section.

(2) Applicants for registration shall file a sworn application on a form prescribed by the board, including the same information as required of applicants for licensure in 37-60-304(2)(a) *and (2)(e) through (2)(g), and the type of employment by which the applicant intends to be employed. The application must be* accompanied by the application fee prescribed by the board.

(3) Applicants for registration as armed private security guards shall meet the same qualifications required of applicants for licensure in 37-60-303(1)(a) through (g) and in addition to those requirements shall:

(a) complete the training requirements of a private security guard training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

(4) Applicants for registration as armed private investigators shall meet the same qualifications required of applicants for licensure in

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37-60-303(2)(a) through *(2)(g) and (5)* and in addition to those requirements shall:

(a) complete the training requirements of a private investigator training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe."

Section 7. Section 37-60-306, MCA, is amended to read:

"37-60-306. Unarmed guards and investigators — identification cards required — qualifications. (1) Except as provided in 37-60-105 and 37-60-308, no person may *be employed as* an unarmed private security guard or an unarmed private investigator in this state without first making application to the board and being issued an identification card in the manner prescribed by this section.

(2) Applicants for identification cards shall file a sworn application on a form prescribed by the board, including the same information as required of licensees in 37-60-304(2)(a) through (g), accompanied by the application fee prescribed by the board.

(3) Applicants for identification cards shall meet such qualifications as may be prescribed by the board, *and applicants for identification cards as unarmed investigators must demonstrate proficiency by successfully passing a written examination.*"

Section 8. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce reasonable rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license, registration, or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, registrants, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses, registrations, and identification cards, and providing for refunding of any such fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to maintain such insurance coverage as the board considers necessary;

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(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses, registrations, and identification cards;

(10) establishing the expiration and renewal periods for licenses, registrations, and identification cards;

(11) for the temporary employment of persons without the required registration or identification cards; *and*

(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators; and

(13) providing for the issuance of probationary registration and identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination."

Section 9. **Installation of new security alarm systems.** An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a journeyman security alarm installer, but such work performed by an electrician is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

Section 10. **Extension of authority.** Any existing authority of the board of private security patrolmen and investigators and the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 30, 1985.

CHAPTER NO. 648

[HB 146]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DEPARTMENT OF ADMINISTRATION'S POWERS AND DUTIES CONCERNING THE SUPERVISION OF CONSTRUCTION OF STATE BUILDINGS; AUTHORIZING THE DEPARTMENT TO DELEGATE CERTAIN OF THOSE POWERS AND DUTIES TO OTHER STATE AGENCIES; REMOVING THE REQUIREMENT FOR DEPARTMENTAL CONCURRENCE ON CERTAIN PROJECTS; REMOVING THE LIMITATION ON PROCUREMENT OF CONSTRUCTION PROJECTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTION 18-2-103, MCA; REPEALING SECTION 87-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

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(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department. However, any powers and duties subject to the approval of the board of examiners may not be delegated.

(3) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(4) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are *$25,000 or* less. *However, with respect to a project having a proposed cost of $25,000 or less but more than $5,000, the agency awarding the contract must procure at least three informal bids from contractors licensed in Montana, if reasonably available.*

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through *(4)* of this section."

Section 2. **Repealer.** Section 87-1-211, MCA, is repealed.

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Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

CHAPTER NO. 649

[HB 344]

AN ACT PROVIDING TRAINING FOR FAMILY PRACTICE RESIDENT PHYSICIANS; LIMITING USE OF FUNDS; APPROPRIATING FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 4] may be cited as the "Family Practice Training Act of 1985".

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training.

Section 3. **Montana family practice training program.** (1) There is created a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

(3) No resident physician may train more than 2 months in any one community in any 12-month period.

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Section 4. **Funding limitations.** (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

Section 5. **Appropriation.** There is appropriated from the general fund $70,000 to the Department of Health and Environmental Sciences for the biennium ending June 30, 1987, for personal services and operating expenses to provide support for family practice residency training.

Section 6. **Effective date.** This act is effective July 1, 1985.

Approved April 30, 1985.

CHAPTER NO. 650

[HB 394]

AN ACT TO ENTITLE PUBLIC EMPLOYEES IN CERTAIN CATEGORIES TO PER DIEM COMPENSATION FOR THEIR SERVICE AS MEMBERS OF QUASI-JUDICIAL AND STATE EDUCATION AND HISTORICAL SOCIETY BOARDS; TO INCREASE THE PER DIEM COMPENSATION FOR MEMBERS OF STATE EDUCATION AND HISTORICAL SOCIETY BOARDS FROM $25 A DAY TO $50 A DAY; AND TO PROVIDE PER DIEM COMPENSATION FOR MEMBERS OF THE STATE LIBRARY COMMISSION; AMENDING SECTIONS 2-15-124, 2-15-1009, 2-15-1512, 2-15-1706, 19-3-302, 20-2-113, 22-1-101, AND 22-3-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-124, MCA, is amended to read:

"**2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used

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in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term..

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless *otherwise provided by law*, each member is entitled to be paid $50 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members *except when they perform their board duties outside their regular working hours or during time charged against their annual leave, but such members* are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. *Ex officio board members may not receive compensation but shall receive travel expenses.*

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 2. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of six members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department);

(b) one retired public employee who is an inactive member of the public employees' retirement system; and

(c) two members at large.

(3) The term of office for each member is 5 years.

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(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall be *compensated and receive travel expenses as provided for* in 2-15-124."

Section 3. Section 2-15-1512, MCA, is amended to read:

"2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society which is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members shall be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, architecture, or architectural history; however, no more than two members may be appointed from any one of these fields;

(ii) a professional paleontologist;

(iii) the state liaison officer for the federal land and water conservation fund;

(iv) two members of the public who have actively demonstrated an interest in historic preservation matters.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) *Members shall be compensated and receive travel expenses as provided for in 2-15-124.*

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of an historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor."

Section 4. Section 2-15-1706, MCA, is amended to read:

"2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 *and* its members shall be compensated and receive travel expenses as provided for in *2-15-124.*

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, except that

the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."

Section 5. Section 19-3-302, MCA, is amended to read:

"19-3-302. Compensation and expenses of board members. *Members* shall be entitled to compensation as provided in *2-15-124*."

Section 6. Section 20-2-113, MCA, is amended to read:

"20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents *shall be compensated and receive travel expenses as provided for in 2-15-124* for each day in attendance at board meetings or in the performance of any duty or service as a board member."

Section 7. Section 22-1-101, MCA, is amended to read:

"22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

(a) the state superintendent of public instruction or his designee;

(b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a chairman from its membership.

(4) The members of said commission shall *be compensated and* receive travel expenses as provided for in *2-15-124*."

Section 8. Section 22-3-105, MCA, is amended to read:

"22-3-105. Compensation and expenses of trustees. Each member of the board of trustees *shall be compensated and receive travel expenses as provided for in 2-15-124*."

Section 9. **Effective date.** This act is effective July 1, 1985.

Approved April 30, 1985.

CHAPTER NO. 651

[HB 444]

AN ACT PROVIDING FOR CHILD SUPPORT ORDERS TO STATE THAT IF THE PERSON OBLIGATED UNDER THE ORDER TO PAY SUPPORT IS DELINQUENT IN THE PAYMENTS, HIS INCOME WILL BE SUBJECT TO WITHHOLDING PROCEDURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Mandatory inclusions in support orders.** Each district court judgment or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing order

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for child support entered after [the effective date of this act] must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under chapter 5, part 3, of this title or House Bill No. 443. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to section 1.

Section 3. **Coordination instruction.** If House Bill No. 443 is not passed and approved, the bracketed bill number material in section 1 of this act is void.

Approved April 30, 1985.

CHAPTER NO. 652

[HB 497]

AN ACT TO PROVIDE THAT THE APPROVAL AGENTS ARE NOT REQUIRED TO APPROVE A TUITION APPLICATION IF THE RESIDENT DISTRICT PROVIDES TRANSPORTATION UNLESS CERTAIN CONDITIONS EXIST; AMENDING SECTION 20-5-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-311, MCA, is amended to read:

"20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent. The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) *(a)* The approval agents shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence.

(b) However, the approval agents are not required to approve a tuition application for a student seeking to attend a high school outside the state

of Montana *or the resident district* if the resident district provides transportation. *This exception does not apply when:*

(i) the child resides in a county different than the county wherein the school he wishes to attend is located; or

(ii) the child has enrolled in a high school outside his resident district and has received an approved tuition agreement on or before [the effective date of this act]. For the purposes of this subsection (2)(b)(iii), the child has the right to continue his high school education in the receiving high school outside his resident district on an approved tuition agreement, subject to the provisions of this section.

(c) In approving a tuition agreement under this provision, the approval agents may require the child to attend the high school closest to his residence. The approval agents may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by one or more approval agents, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by all of the applicable approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

CHAPTER NO. 653

[HB 554]

AN ACT REQUIRING CONTRACTS FOR PROJECTS FINANCED UNDER THE MONTANA ECONOMIC DEVELOPMENT BOND ACT, THE MONTANA IN-STATE INVESTMENT ACT, AND THE INDUSTRIAL DEVELOPMENT PROJECTS LAW TO CONTAIN A PROVISION GIVING PREFERENCE TO THE EMPLOYMENT OF MONTANA RESIDENTS; AMENDING SECTIONS 17-5-1526 AND 17-5-1527, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects. (1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents as defined in 18-2-401(4) in the performance of the work on the projects, if their qualifications are substantially equal to those of nonresidents. Substantially equal qualifications means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project."

Section 2. Section 17-5-1527, MCA, is amended to read:

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"17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents as defined in 18-2-401(4) in the performance of the work on the projects, if their qualifications are substantially equal to those of nonresidents. Substantially equal qualifications means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other person; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the

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lessee, borrower, or user of the project; and the estimated cost of the project."

Section 3. **Preference of Montana labor.** Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents as defined in 18-2-401(4) in the performance of the work on the projects, if their qualifications are substantially equal to those of nonresidents. Substantially equal qualifications means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

Section 4. **Extension of authority.** Any existing authority of the board of economic development to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 17, chapter 6, part 3, and as an integral part of Title 90, chapter 5, part 1, and the provisions of Title 17, chapter 6, part 3, and of Title 90, chapter 5, part 1, apply to section 3.

Approved April 30, 1985.

CHAPTER NO. 654

[HB 585]

AN ACT TO REVISE THE SENTENCE REVIEW PROCEDURE; PROVIDING THAT ANY INTERESTED PERSON MAY PARTICIPATE IN REVIEW PROCEEDINGS; CREATING A PRESUMPTION IN FAVOR OF THE SENTENCE IMPOSED; AMENDING SECTION 46-18-904, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-904, MCA, is amended to read:

"46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. *Any other interested*

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person, including the sentencing judge, may attend and participate in the review proceedings.

(3) *The sentence imposed by the district court is presumed correct.* If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted."

Approved April 30, 1985.

CHAPTER NO. 655

[HB 608]

AN ACT TO REQUIRE MANDATORY APPROVAL OF A TUITION APPLICATION WHEN AN ELEMENTARY OR HIGH SCHOOL STUDENT IS TRANSFERRED FROM THE STUDENT'S RESIDENT DISTRICT AS THE RESULT OF A COURT ORDER; AMENDING SECTIONS 20-5-301 AND 20-5-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-301, MCA, is amended to read:

"20-5-301. Elementary tuition with mandatory approval. (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the child's residence.

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(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed child care institution which is approved by the department of social and rehabilitation services and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence does not apply.

(f) the child is required to attend elementary school outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application."

Section 2. Section 20-5-311, MCA, is amended to read:

"20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of

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another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent. The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) *(a)* The approval agents shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence. In approving such a tuition application the approval agents are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the approval agents may require the child to attend the high school closest to his residence. The approval agents may approve any other tuition application that satisfies the geographic requirements of this section.

(b) The approval agents shall approve a tuition application when a child is required to attend high school outside the district of residence as the result of an order of a court of competent jurisdiction. For purposes of this subsection (b), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (2); or

(ii) an order issued under Title 40, chapter 4, part 2.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by one or more approval agents, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by all of the applicable approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Approved April 30, 1985.

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CHAPTER NO. 656

[HB 616]

AN ACT AUTHORIZING CREATION OF BUSINESS IMPROVEMENT DISTRICTS; PROVIDING PROCEDURES FOR CREATION; PROVIDING FOR ORGANIZATION, OPERATION, APPOINTMENT, TERMS, AND REMOVAL OF A BOARD OF TRUSTEES; ESTABLISHING POWERS OF THE BOARD OF TRUSTEES; PROVIDING FOR A BUDGET AND AN ANNUAL WORK PLAN; PROVIDING FOR A MANNER OF ASSESSING COSTS; PROVIDING FOR A TAX LEVY UPON THE DISTRICT; PROVIDING FOR THE DURATION OF THE DISTRICT; PROHIBITING DECREASE IN SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Business Improvement District Act".

Section 2. **Purpose.** The purpose of [this act] is to provide for the creation of business improvement districts having the purposes and powers provided in [this act] that will serve a public use; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; and will be of special benefit to the property within the boundaries of any district created pursuant to the provisions of [this act].

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Appointing authority" means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) "Board" means the board of trustees created in [section 5].

(3) "Business" means all types of business, including professions.

(4) "District" means a business improvement district created under [this act].

(5) "Governing body" means the legislative body of a local government.

(6) "Local government" means a municipality, a county, or a consolidated city-county government.

(7) "Owner" means a person in whom appears the legal title to real property by deed duly recorded in the county records or a person in possession of real property under claim of ownership for himself or as the personal representative, agent, or guardian of the owner.

Section 4. **Establishment of a district.** (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district, a governing body shall establish a district as provided in [this act].

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(2) The boundaries of a district must comply with applicable zoning regulations and the district may not include areas that are zoned primarily as residential areas.

Section 5. **Resolution of intention to create business improvement district — notice.** (1) Before creating a district, the governing body shall pass a resolution of intention to do so designating the boundaries thereof.

(2) Notice of passage of the resolution must be published for 5 days in a daily newspaper or in one issue of a weekly paper published in the municipality or county or, in case no newspaper is published in the municipality or county, then by posting for 5 days in three public places in the municipality or county. A copy of the notice shall be mailed to every owner of real property within the proposed district listed on the last completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of such district. The notice shall refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

Section 6. **Protest against proposed district.** (1) Any owner of property liable to be assessed may make written protest against the extent or creation of the district to be assessed, or both.

(2) The protest must be in writing and must be delivered to the governing body or its clerk, if any, not later than 5 p.m. of the last day within 15 days after the date of the first publication of the notice of the resolution of intention. The date and hour of receipt of the protest shall be endorsed thereon.

Section 7. **Hearing on protest — sufficient protest to bar proceedings.** (1) At a regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall proceed to hear and pass upon all protests. Its decision shall be final and conclusive.

(2) The governing body may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action thereon by the council or commission.

(3) No further action shall be taken upon the proposed district for 1 year if a written protest against passage of the proposed ordinance is filed by:

(a) owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district;

(b) not less than 50% of the owners of property within the district; or

(c) owners of property within the proposed district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district.

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Section 8. **Resolution creating business improvement district.** When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district has been heard and denied, the governing body has jurisdiction to order the creation of the district and shall pass a resolution creating the district in accordance with the resolution of intention.

Section 9. **Board of trustees — appointment — number.** (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property within the district to comprise the board of trustees of the district.

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of his appointed term.

Section 10. **Term of office.** (1) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(2) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A member shall hold office until his successor has been appointed and qualified.

Section 11. **Removal of board member.** A member of a board of trustees may be removed by the appointing authority with the consent of the governing body.

Section 12. **Organization of board of trustees — no compensation.** (1) The appointing authority shall designate which member of the board is to be the first chairman. When the office of chairman of the board becomes vacant thereafter, the board shall elect a chairman from among its members. The term of office as chairman of the board, unless otherwise prescribed by the governing body, must be for 1 calendar year or for that portion thereof remaining after each chairman is designated or elected.

(2) Members may receive no compensation.

Section 13. **Powers of board in administering district.** The board in administering a district has all powers necessary to carry out the functions of the district contained in the ordinance creating it, including the power to:

(1) sue and be sued, enter into contracts, and hire and terminate personnel needed for its purposes;

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(2) provide special police, maintenance, or cleaning personnel for the protection and enjoyment of the general public using the business district;

(3) landscape and beautify public areas and to maintain those areas;

(4) contract with the governing body to maintain, operate, or repair public parking facilities;

(5) contract with the governing body to maintain streets, alleys, malls, bridges, ramps, tunnels, landscaping, and other public facilities as mutually agreed upon;

(6) promote private investment and business expansion in the district;

(7) provide for the management and administration of the affairs of the district;

(8) promote business activity by advertising, decorating, marketing, and promoting and managing events and other actions designed for the general promotion of business activities in the district; and

(9) perform such other functions as are necessary to carry out the purposes of [this act] and to further the objectives of the district.

Section 14. **Annual budget and work plan — approval — procedure — tax.** (1) At a time determined by the governing body, the board shall submit to the governing body for approval a work plan and budget for the ensuing fiscal year.

(2) Following public notice that a work plan and budget have been submitted and that the governing body will levy an assessment to defray the cost of the work plan and budget, the governing body shall hold a public hearing on objections to the work plan and budget. After the hearing, the governing body may modify the work plan and budget as it considers necessary and appropriate.

(3) After approval of the work plan and budget and to defray the cost thereof for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in [section 15].

(4) A copy of the resolution shall be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes.

Section 15. **Assessment of costs — area, lot, and taxable valuation options.** (1) At the same time the board submits the annual budget and work plan to the governing body as provided in [section 14], the board shall also recommend to the governing body a method of levying an assessment on the property within the district which will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method which best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the

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governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within such district may be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the whole cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district; or

(d) by using any combination of the assessment options provided in subsections (a) through (c).

Section 16. **Duration of district.** The period of duration of a business improvement district is for the period specified in the resolution of the governing body creating the district but shall not be for a period longer than 10 years unless the duration of the district is extended in compliance with the provisions of [this act] for the creation of a district.

Section 17. **Governing body not to decrease public services.** The governing body may not decrease the level of public services in the district existing prior to the creation of the district unless the services at the same time are decreased throughout the jurisdictional area of the governing body, nor may it transfer the financial burden of providing those services to the district. The governing body may not discriminate in the provision of publicly funded services between areas included in such district and areas not so included.

Section 18. **Liability insurance required.** The governing body may not approve the annual budget or the work plan submitted to it by the board unless the annual budget and the work plan provide for liability insurance coverage insuring the district, the board, and the local government against legal liability for personal injury and property damage in an amount determined sufficient for that purpose by the governing body.

Section 19. **Limitation on local government liability.** An obligation or debt of any nature of a district is not an obligation or debt of the local government that established the district, and in no event is a debt or obligation of a district payable out of any funds or properties of the local government. The debts and obligations of a district are payable solely from the funds and properties of the district.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

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CHAPTER NO. 657

[HB 625]

AN ACT TO PROVIDE ADDITIONAL ALTERNATIVES FOR THE ASSESSMENT OF COSTS FOR STREET MAINTENANCE DISTRICTS; REVISING THE METHOD OF MEASURING PROTEST VOTES; AMENDING SECTIONS 7-12-4407, 7-12-4421, 7-12-4422, 7-12-4425, AND 7-12-4428, MCA; REPEALING SECTIONS 7-12-4423 AND 7-12-4424, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4421, MCA, is amended to read:

"7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of maintaining streets, alleys, and public places shall be made against all of the property embraced within each maintenance district by one of the methods provided in 7-12-4422."

Section 2. Section 7-12-4422, MCA, is amended to read:

"7-12-4422. Assessment of costs — area, frontage, lot, and taxable valuation options. *The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:*

(1) each lot or parcel of land within such district *may* be assessed for that part of the cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(2) each lot or parcel of land within such district abutting upon a street upon which maintenance is done may be assessed for that part of the cost which its street frontage bears to the street frontage of the entire district;

(3) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(4) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district; or

(5) by using any combination of the assessment options provided in subsections (1) through(4)."

Section 3. Section 7-12-4425, MCA, is amended to read:

"7-12-4425. Resolution for assessment of costs of maintenance. (1) The city council shall estimate, as near as practicable, the cost of maintenance in each established district annually, not later than the second Monday in August. The council shall pass and finally adopt a resolution *specifying the district assessment option and* levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work.

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(2) The resolution levying the assessment to defray the cost of maintenance shall contain or refer to a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk."

Section 4. Section 7-12-4428, MCA, is amended to read:

"7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in maintenance districts in the manner and as provided in 7-12-4421 *and 7-12-4422* to meet the payments required to be made each year."

Section 5. Section 7-12-4407, MCA, is amended to read:

"7-12-4407. Protest against ordinance for improvements. *No further action shall be taken upon the proposed district for 1 year if a written protest against passage of the proposed ordinance is filed by:*

(1) owners of property within the proposed maintenance district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district;

(2) not less than 50% of the owners of property within the district; or

(3) owners of property within the proposed maintenance district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district."

Section 6. **Repealer.** Sections 7-12-4423 and 7-12-4424, MCA, are repealed.

Section 7. **Effective date.** This act is effective July 1, 1985.

Approved April 30, 1985.

CHAPTER NO. 658

[HB 632]

AN ACT PROVIDING A COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT ALLOWANCES AND SURVIVORSHIP ALLOWANCES FOR CERTAIN MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM AND THEIR BENEFICIARIES; PROVIDING A MINIMUM MONTHLY BENEFIT ALLOWANCE FOR CERTAIN MEMBERS OF THE SYSTEM AND THEIR BENEFICIARIES; INCREASING THE EMPLOYER'S CONTRIBUTION TO THE SYSTEM; AMENDING SECTION 19-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost-of-living increase.** Effective July 1, 1985, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the teachers' retirement system retired before July 1, 1983, or his beneficiary must be increased as follows:

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(1) 50 cents for each year of creditable service for a member or beneficiary receiving a monthly allowance of more than $500 but less than $1,000, exclusive of the increase provided in this subsection; and

(2) $1 for each year of creditable service for a member or beneficiary receiving a monthly allowance of $500 or less, exclusive of the increase provided in this subsection.

Section 2. **Minimum monthly benefit allowance.** (1) A member of the teachers' retirement system retired before July 1, 1971, who is receiving a service or disability retirement allowance, or his beneficiary who is receiving a service, disability, or survivorship allowance, is eligible to receive a minimum monthly benefit allowance of $400 if at the time of retirement the member:

(a) was 60 years of age or older; and

(b) had completed 30 years or more of service.

(2) A member or beneficiary who is eligible for a minimum monthly benefit allowance under subsection (1) is entitled to receive this benefit increase before his allowance is adjusted under [section 1].

Section 3. Section 19-4-605, MCA, is amended to read:

"19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities shall be accumulated and from which pensions, annuities, and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to *7.428%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits in lieu thereof shall be paid from the pension accumulation fund.

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(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration."

Section 4. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1985.

Approved April 30, 1985.

CHAPTER NO. 659

[HB 686]

AN ACT TO GENERALLY REVISE THE PROCEDURES RELATING TO THE FILING AND CONDUCT OF CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS; AMENDING SECTIONS 41-3-301, 41-3-401 THROUGH 41-3-404, AND 41-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. *The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.*

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 2. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, *attorney general, or an attorney hired by the county welfare department or office of human services* shall be responsible for filing all petitions alleging abuse, neglect, or dependency. *The county attorney or attorney general, or an attorney hired by the county welfare department or*

office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates *and must be heard within 20 days of the filing of the petition.*

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

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(c) termination of the parent-child legal relationship;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. Section 41-3-402, MCA, is amended to read:

"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, *attorney general, or an attorney hired by the county welfare department or office of human services* may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, *attorney general, county welfare department attorney, or office of human services attorney* or a department of social and rehabilitation services report stating in detail the facts upon which the request is based."

Section 4. Section 41-3-403, MCA, is amended to read:

"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order, *along with the petition and supporting documents,* shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein. *When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth at the time the placement is made, or as soon thereafter as possible.*

(c) The order shall require the person served to comply immediately with the terms thereof or to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. *The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order.* Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of social and rehabilitation services until further order.

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(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth."

Section 5. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing *to be conducted within 30 days* and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 6. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing. If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(1) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

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(2) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in *41-3-408*;

(3) transfer legal custody to any of the following:

(a) department of social and rehabilitation services;

(b) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(c) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(4) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(5) order such further care and treatment as the court may deem in the best interest of the youth."

Section 7. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 30, 1985.

CHAPTER NO. 660

[HB 696]

AN ACT RELATING TO THE COST INDICATOR USED IN THE VALUATION OF CENTRALLY ASSESSED PROPERTIES; DIRECTING THE AMENDMENT OF RULE 42.22.112, ADMINISTRATIVE RULES OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1.The Department of Revenue shall amend Rule 42.22.112, Administrative Rules of Montana, to read:

"**42.22.112 COST INDICATOR** (1) The cost indicator of value shall be derived from information contained in the company's report to the department, report to a regulatory agency, property descriptions submitted to the department, and any other reliable source of information. The department will include the cost of all operating properties which are taxable under Montana law. This includes properties both within and without the state.

(2) The type of cost used may be one of the following:

(a) replacement;

(b) replacement less depreciation;

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(c) reproduction;

(d) reproduction less depreciation;

(e) historical (original); and

(f) historical less depreciation.

(3) The choice of cost shall depend upon which type best reflects market value of the property at the time of valuation. For taxable periods beginning after December 31, 1985, the cost indicator *for railroads, airlines, and other federally protected taxpayers shall be treated consistent with federal law.*"

Approved April 30, 1985.

CHAPTER NO. 661

[HB 707]

AN ACT TO REVISE THE LAW REGULATING PLUMBING; CLARIFYING THE DEFINITION OF "PLUMBING SYSTEM"; REVISING AND PROVIDING EXCEPTIONS TO THE PLUMBING PRACTICE LAWS; REMOVING THE REQUIREMENT FOR BOARD OF PLUMBERS APPROVAL FOR UNLICENSED PERSONNEL WHEN A LICENSEE IS UNAVAILABLE; PROVIDING FOR RECIPROCAL LICENSING OF PLUMBERS LICENSED IN OTHER STATES; REVISING THE LICENSE DISCIPLINE LAW; PROVIDING THAT A VIOLATION OF PROVISIONS OF TITLE 37, CHAPTER 69, IS A MISDEMEANOR; AMENDING SECTIONS 37-69-101, 37-69-102, 37-69-301, AND 37-69-324, MCA; AND REPEALING SECTION 37-69-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-69-101, MCA, is amended to read:

"**37-69-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

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(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) *(a) Except as provided in subsection (7)(b),* "*plumbing* system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, *up to 20 feet beyond the building foundation line,* and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis."

Section 2. Section 37-69-102, MCA, is amended to read:

"37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in *a farm* or *ranch not connected to public* water supply and sewage disposal systems;

(d) in cities, towns, *water districts, and water user associations* extending their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer; *and*

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system.

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(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms *or ranches not connected to public* water supply or sewage disposal *systems.*"

Section 3. Section 37-69-301, MCA, is amended to read:

"**37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available.** Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice *by certified letter* to the board of plumbers and upon their approval, *or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter,* authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available *or until the board of plumbers withdraws its authorization.*"

Section 4. **Extension of authority.** Any existing authority of the board of plumbers to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Plumbers licensed by other states — reciprocity.** To the extent that other states that provide for the licensing of plumbers provide for similar action, the board may grant licenses to plumbers licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination. The board has authority to adopt rules necessary to implement this action.

Section 6. **License discipline.** (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license to practice in the field of plumbing;

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(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence which impairs the licensee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted hereunder or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted thereunder; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee disciplinary action under the jurisdiction of the board shall be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

Section 7. Section 37-69-324, MCA, is amended to read:

"37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, *is guilty of a misdemeanor.* However, this chapter *may* not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions."

Section 8. **Repealer.** Section 37-69-321, MCA, is repealed.

Section 9. **Codification instruction.** Sections 5 and 6 are intended to be codified as an integral part of Title 37, chapter 69, part 3, and the provisions of Title 37, chapter 69, apply to sections 5 and 6.

Approved April 30, 1985.

CHAPTER NO. 662

[HB 737]

AN ACT PERMITTING A COUNTY ATTORNEY OR COUNTY WELFARE DEPARTMENT TO CONVENE ADULT PROTECTIVE SERVICE TEAMS TO ASSIST OLDER PERSONS WHO ARE VICTIMS OF ABUSE, NEGLECT, OR EXPLOITATION; PERMITTING DISCLOSURE OF REPORTS FILED UNDER THE MONTANA ELDER ABUSE PREVENTION ACT TO SUCH TEAMS; AMENDING SECTION 53-5-513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adult protective service teams.** The county attorney or the county welfare department may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may

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assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the county welfare department or his designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his designee, who is an attorney.

Section 2. Section 53-5-513, MCA, is amended to read:

"53-5-513. Confidentiality. (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 53-5-511 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person who is the subject of the report is not disclosed to the researcher*; and*

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed upon request to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by the department of commerce or any other entity of state government under

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the provisions of Title 37, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 5, part 5, and the provisions of Title 53, chapter 5, part 5, apply to section 1.

Approved April 30, 1985.

CHAPTER NO. 663

[HB 869]

AN ACT EXTENDING TO ALL LOWER INCOME PROPERTY OWNERS THE PROPERTY TAX REDUCTIONS FOR WIDOWS AND WIDOWERS AT LEAST 62 YEARS OF AGE, WIDOWS AND WIDOWERS WITH DEPENDENT CHILDREN, AND RECIPIENTS OF RETIREMENT OR DISABILITY BENEFITS; ADJUSTING THE INCOME SCHEDULE FOR SUCH PROPERTY TAX REDUCTIONS; AMENDING SECTIONS 15-6-134, 15-6-142, AND 15-6-151, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of *any person* whose total income from all sources including otherwise tax-exempt income of all types is not more than *$10,000* for a single person or *$12,000* for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 8.55% of its market value.

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(b) Property described in subsection (1)(c) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	*$0 - $1,200*	*0%*
1,001 - 2,000	*1,201 - 2,400*	*10%*
2,001 - 3,000	*2,401 - 3,600*	*20%*
3,001 - 4,000	*3,601 - 4,800*	*30%*
4,001 - 5,000	*4,801 - 6,000*	*40%*
5,001 - 6,000	*6,001 - 7,200*	*50%*
6,001 - 7,000	*7,201 - 8,400*	*60%*
7,001 - 8,000	*8,401 - 9,600*	*70%*
8,001 - 9,000	*9,601 - 10,800*	*80%*
9,001 - 10,000	*10,801 - 12,000*	*90%*

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a), or 4.275%."

Section 2. Section 15-6-142, MCA, is amended to read:

"15-6-142. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first $35,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of *any person* whose total income from all sources including otherwise tax-exempt income of all types is not more than *$10,000* for a single person or *$12,000* for a married couple.

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(b) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b) of 15-6-134."

Section 3. Section 15-6-151, MCA, is amended to read:

"15-6-151. Application for certain class four classifications. (1) A person applying for classification of property described in subsection (1)(c) of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

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(b) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(c) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time it considers necessary.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1985.

Approved April 30, 1985.

CHAPTER NO. 664

[HB 873]

AN ACT AUTHORIZING A MONTANA STATEHOOD CENTENNIAL OFFICE AND STAFF; PROVIDING FOR A MONTANA STATEHOOD CENTENNIAL COMMISSION; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purposes.** (1) The purposes of [this act] are to:

(a) encourage the commemoration and celebration of Montana's 100th anniversary of statehood on November 8, 1989, by fostering community, statewide, and regional activities and by focusing national and international attention on the treasure state;

(b) create a Montana statehood centennial office to administer Montana statehood centennial activities which include but are not limited to educational, cultural, recreational, and promotional programs; and

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(c) create a Montana statehood centennial commission to advise on centennial activities.

Section 2. **Definitions.** For purposes of [this act], the following definitions apply:

(1) "Office" means the Montana statehood centennial office established in [section 3].

(2) "Commission" means the advisory council known as the Montana statehood centennial commission established in [section 4].

Section 3. **Montana statehood centennial office.** (1) There is a Montana statehood centennial office in the office of the lieutenant governor. The office is the agency authorized to administer centennial activities as provided in [sections 1, 2, and 4 through 6].

(2) The lieutenant governor may hire staff to support and administer statehood centennial activities. Such staff are considered personal staff for purposes of Title 2, chapter 18.

Section 4. **Montana statehood centennial commission — duties.** (1) The governor shall appoint an advisory council to be known as the Montana statehood centennial commission. The lieutenant governor is the chairman of the commission.

(2) The commission shall furnish advice and make recommendations to the office on topics including but not limited to the following:

(a) the themes and criteria that apply to endorsing specific centennial projects;

(b) the criteria that apply in awarding grants to individuals and organizations, public or private, for activities in furtherance of centennial activities;

(c) ways to administer and encourage the commemoration of Montana's 100th anniversary of statehood on November 8, 1989, and to foster related activities prior to and after that date;

(d) ways to assure active citizen and community involvement, diversity in the presentation of topics, and balance in the examination of our past with expectations of the future;

(e) ways to focus national and international attention on Montana while reminding Montanans what Montana has been, is, and hopes to become. The commission shall encourage and foster types of activities focusing on Montana's heritage and the legacy that our pioneers, parents, and citizens have endowed to future residents of Montana.

(f) ways to integrate, whenever practicable, Montana's centennial activities during the years preceding and following the centennial, with centennial celebrations and activities of neighboring states and provinces, since such other activities provide forums and opportunities for Montana's centennial celebration.

Section 5. **Powers and duties of office.** (1) The office shall:

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(a) plan and coordinate statehood centennial activities;

(b) hold public hearings and meetings throughout the state and coordinate with similar organizations in other states;

(c) serve as a clearinghouse for centennial information and scheduling; and

(d) publish its goals and objectives to encourage public awareness of centennial activities.

(2) The office may:

(a) accept and expend grants, gifts, loans, and devises and use them for any lawful purpose in the furtherance of [sections 1, 2, and 4 through 6], subject to any restrictions by the grantor, lender, or devisor;

(b) contract with, grant, or regrant funds to any individual or organization, public or private, for activities in the furtherance of [sections 1, 2, and 4 through 6]; and

(c) register trademarks, logos, symbols, and similar items for its own use and the use of other entities and for such use may require other entities to meet such conditions as the payment of a fee or royalty.

Section 6. **Rulemaking authority.** The office is authorized to adopt rules pursuant to Title 2, chapter 4:

(1) to establish criteria that will apply to endorsing centennial projects;

(2) to establish criteria that will apply in awarding grants to individuals and entities for activities in furtherance of centennial activities; and

(3) to implement the provisions of [this act].

Section 7. **Appropriation.** There is appropriated to the Montana Statehood Centennial Office for the biennium ending June 30, 1987:

(1) an amount not to exceed $119,110 on loan from the crime victims compensation account, to be repaid from the revenues raised under subsection (4) by June 30, 1987;

(2) an amount not to exceed $119,110 on loan from the junk vehicle disposal account, to be repaid from the revenues raised under subsection (4) by June 30, 1987;

(3) all gifts, devises, loans, and money received by the office, or by the state on behalf of the office, before July 1, 1987, from public or private sources; and

(4) all funds derived, prior to July 1, 1987, from the following acts in which such acts specifically identify funds that are to be generated for the purpose of providing funds for centennial activities:

(a) Chapter 674, Laws of 1985, enacted as Senate Bill No. 419;

(b) Chapter 489, Laws of 1985, enacted as Senate Bill No. 380.

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Section 8. **Effective date and termination date.** (1) This act is effective July 1, 1985.

(2) This act terminates June 30, 1991.

Approved April 30, 1985.

CHAPTER NO. 665

[HB 885]

AN ACT TO AMEND AND CLARIFY THE LAWS RELATING TO RURAL SPECIAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; AMENDING PROVISIONS RELATING TO INCIDENTAL COSTS, PROTESTS, ASSESSMENT OPTIONS, ACQUISITION OF IMPROVEMENTS, NOTICE, DEFINITIONS OF BONDS, REDEMPTION OF BONDS, REVOLVING FUNDS, AND REFUNDING BONDS; AMENDING SECTIONS 7-12-2101 THROUGH 7-12-2103, 7-12-2105, 7-12-2108, 7-12-2109, 7-12-2112, 7-12-2119, 7-12-2151 THROUGH 7-12-2153, 7-12-2158, 7-12-2159, 7-12-2167, 7-12-2169, 7-12-2171 THROUGH 7-12-2174, 7-12-4101, 7-12-4102, 7-12-4104, 7-12-4106, 7-12-4109, 7-12-4110, 7-12-4113, 7-12-4123, 7-12-4145, 7-12-4161 THROUGH 7-12-4165, 7-12-4169, 7-12-4176, 7-12-4177, 7-12-4179, 7-12-4188 THROUGH 7-12-4190, 7-12-4201, AND 7-12-4203 THROUGH 7-12-4206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2101, MCA, is amended to read:

"7-12-2101. Definitions. (1) The term "board of county commissioners" includes any body or board which under the law is the legislative department of the government of the county.

(2) The word "blocks", shall mean such blocks, whether regular or irregular, as are bounded by main streets or partially by a boundary line of the city.

(3) The word "city" and the word "municipality", as used in this part, shall be understood and so construed as to include all corporations heretofore organized and now existing and hereafter organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who shall be clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

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(6) The term "engineer", as used in this part, means the person, firm, or corporation *who* is designated by the board of county commissioners as the engineer for the improvement.

(7) The term "incidental expenses", as used in this part, *includes:*

(a) the compensation of the engineer for work done by him;

(b) the cost of printing and advertising, as provided in this part;

(c) interest on warrants of the county issued to pay costs of improvements as provided in this part;

(d) costs of issuance of the bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorneys' fees and financial consultants' fees, a premium for bond insurance, any price paid by the original purchaser of the bonds that is less than the face amount thereof, and interest to accrue on bonds or warrants of the special improvement district before assessments levied by the district are collected in amounts and at times sufficient to pay such interest; and

(e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees.

(8) The term "main street" means such actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, shall be held to mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part as to irregular blocks, includes all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street or when no main street intervenes, all the way to the boundary line of any city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years next preceding.

(12) The term "street intersection", wherever used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets, which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) The words "work", "improved", and "improvements", as used in this part, shall include all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of all or any portion of said work."

Section 2. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts. (1) Whenever the public interest or convenience may require, the

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board of county commissioners is hereby authorized and empowered to order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase *one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.*

(2) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may *not* be included in the rural special improvement district if *40%* of those property owners *protest the creation* of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions."

Section 3. Section 7-12-2103, MCA, is amended to read:

"7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvements which are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost thereof; *and*

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district."

Section 4. Section 7-12-2105, MCA, is amended to read:

"7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners must give notice of the passage of such resolution of intention.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within

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the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation owning real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made or acquired by purchase, state the estimated cost thereof, *describe generally the method or methods by which the costs of the improvements will be assessed,* and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement."

Section 5. Section 7-12-2108, MCA, is amended to read:

"7-12-2108. Extension of proposed district. Whenever a contemplated work or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit or whenever, according to the estimates furnished by the county surveyor or *the* engineer, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed (if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll whereon it was assessed for taxes), the board may make the expense of such work chargeable upon the *lots and lands fronting upon such proposed improvement and upon* other lots and lands not fronting on the improvement and which the board shall declare, in its resolution of intention, to be the *property* benefited by said work or improvement and to be assessed to pay the cost and expense thereof."

Section 6. **Multiple improvements in single proceeding.** The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions thereof, and it may exempt any of the work already done upon a street to the official grade.

Section 7. Section 7-12-2109, MCA, is amended to read:

"7-12-2109. Right to protest creation or extension of district. At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing, *identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must* be delivered to the county clerk, who shall endorse thereon the date of its receipt by him."

Section 8. Section 7-12-2112, MCA, is amended to read:

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"7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the county clerk when the board of county commissioners finds that such protest is made by the owners of *property in the district to be assessed for* more than 50% of *the cost of* the proposed work, *in accordance with the method or methods of assessment described in the resolution of intention.*

(2) In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board."

Section 9. Section 7-12-2119, MCA, is amended to read:

"7-12-2119. Manner of making demands for incidental expenses. All demands for incidental expenses in 7-12-2101(7), *except for the administrative fee of the county and interest payable on warrants or bonds of the district,* shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant."

Section 10. Section 7-12-2151, MCA, is amended to read:

"7-12-2151. Assessment of costs. *(1)* To defray the cost of making *or acquiring* any of the improvements provided for in this part, *including incidental expenses,* the board of county commissioners shall *assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall* adopt *one or any combination of* the following *methods* of assessment *for each improvement made or acquired for the benefit of the district:*

(a) Each lot, *tract,* or parcel of land assessed in such district *may* be assessed with that part of the whole cost which its *assessable* area bears to the *assessable* area of *all* the *benefited lots, tracts, or parcels in the* district, exclusive of streets, avenues, alleys, and public places. *For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.*

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the *benefited* lots or pieces of land within said district, *if the board determines such assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.*

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one

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improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements.

(3) The board in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the *benefited* property in the district."

Section 11. Section 7-12-2152, MCA, is amended to read:

"7-12-2152. Exception for owners of water ditches under certain circumstances. The owner or owners of open ditches carrying irrigation or other water shall not be included in any rural improvement district under this part for the purpose of assessment to support the rural improvement district for the installation, repair, or maintenance of any protective devices *intended to protect the safety of the public from open ditches carrying irrigation or other water.* Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch."

Section 12. Section 7-12-2153, MCA, is amended to read:

"7-12-2153. Incidental expenses considered as cost of improvements. (1) The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; *and the other incidental expenses described in 7-12-2101(7)* shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

(2) The original costs of any improvement may, at the option of the *board of county commissioners,* include an amount not to exceed 5% of the principal amount of any bonds or warrants to be issued, which shall be deposited in the revolving fund created in 7-12-2181."

Section 13. Section 7-12-2158, MCA, is amended to read:

"7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making *or acquiring* improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all *benefited* property in the district created for such purpose, by using for a basis for such assessment the method *or methods* provided for by this part *and described in the resolution of intention.*

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk."

Section 14. Section 7-12-2159, MCA, is amended to read:

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"7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be:

(a) published *as provided in [Senate Bill No. 130, section 1];*

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (such lands must be identified and the mailing address determined from the last completed assessment roll for state, county, and school district taxes); and

(c) mailed to such other persons known to the clerk to have an ownership interest in the property.

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the *second* publication *or less than 10 days after the mailing* of the notice."

Section 15. Section 7-12-2167, MCA, is amended to read:

"7-12-2167. Term of payment of assessments. (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

(3) If the bonds of the special improvement district are issued as serial bonds, the assessments must be payable in equal annual installments. If the bonds are issued as amortization bonds, the assessments must be payable in equal annual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(4) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable."

Section 16. **Interest rate on delinquent assessments.** The installments of assessments remaining unpaid bear simple interest at an annual rate of the sum of ½ of 1% a year plus the average interest rate payable on the outstanding bonds or warrants of the special improvement district.

Section 17. **Change in outstanding principal of district — relevy of assessments.** If proceeds of the bonds or warrants of the special improvement district, including investment income thereon, are applied to the redemption and prepayment of such bonds or warrants, as provided in 7-12-2173 and 7-12-2174, or if refunding bonds are issued pursuant to [section 26] and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and

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then outstanding must be reduced or increased, respectively, pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The board shall reassess and relevy such assessments, with the same effect as an original levy, in such reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160.

Section 18. Section 7-12-2169, MCA, is amended to read:

"7-12-2169. Use of bonds and warrants. All costs and expenses incurred in any improvement district in the *acquisition,* construction, or maintenance of any improvement specified in this part *or incurred in the issuance of bonds or warrants of the district, including incidental expenses,* shall be paid for by special improvement district bonds or warrants. The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the method provided in 7-12-2172 and 7-12-2173."

Section 19. Section 7-12-2171, MCA, is amended to read:

"7-12-2171. Details relating to rural improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district (that is, either the construction or maintenance fund, as the case may be) and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually *or semiannually, at the discretion of* the board of county commissioners, *on such dates as the board* prescribes. Such warrants or bonds shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the chairman of the board and the county clerk. Said coupons may bear the facsimile signatures of said officers in the discretion of the board.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period of not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years.

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the board, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest."

Section 20. **Definitions of forms of bonds.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Amortization bonds" means the form of bonds on which:

(a) a part of the principal must be paid each time interest becomes payable;

(b) the part payment of principal increases at each installment in the same amount that the interest decreases;

(c) the combined interest and principal due on each due date remains the same until the bonds are paid;

(d) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(e) the initial payment may be larger than subsequent payments if such increase represents interest accrued over an additional period not greater than 6 months.

(2) "Serial bonds" means the form of bonds that are payable in annual installments and on which the amount maturing each year may not be more than three times the principal amount of bonds maturing in any previous year.

Section 21. Section 7-12-2172, MCA, is amended to read:

"7-12-2172. Procedure to issue bonds and warrants. (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the *improvements* which is to be assessed against the *benefited* property within the district, to the highest and best bidder therefor for cash, *at a price,* including interest thereon *to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value thereof if it determines that such sale is in the best interests of the district and the county.*

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or an agency, instrumentality, corporation, or department thereof.

(3) In all other cases, the provisions of 7-7-4251 through 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants."

Section 22. **Pooling of bonds of districts in county.** (1) If the board of county commissioners determines by resolution that the pooling of bonds of more than one special improvement district of the county is in the best interest of the county and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the county may issue bonds of the districts combined in a single offering. Such bonds must be secured by the rural special improvement district revolving fund of the county.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which must be payable the assessments levied in each of the districts.

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Section 23. Section 7-12-2173, MCA, is amended to read:

"7-12-2173. Disposition of bond or warrant proceeds. (1) The board of county commissioners shall use the proceeds of such sale in making payment *for the cost of the improvements. Payments to contractors* may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

(2) All interest earned on the investment of bond or warrant proceeds *during the construction of improvements* must be credited to the *construction account of the* improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given."

Section 24. Section 7-12-2174, MCA, is amended to read:

"7-12-2174. Redemption of bonds and warrants. (1) The county treasurer shall first pay out of the proper special improvement district fund, *on each interest payment date*, the interest on all outstanding warrants or bonds on presentation of the coupons belonging thereto *or otherwise then payable* and *the principal, if any, then payable on the warrants or bonds. Any* funds remaining in the fund shall be applied to the redemption of the warrants or bonds in order of their registration *as provided in subsection (2).*

(2) *Special improvement district* warrants or bonds shall be redeemed *on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-2173, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants are subject to redemption and prepayment at the option of the county on any interest payment date.*

(3) The date of redemption shall be fixed by the county treasurer and shall not be less than 10 days after the date of publication or of *mailing* of notice. The county treasurer shall give written notice to the holders of *the* warrants or bonds *to be redeemed*, if their addresses *are* known, of the number of warrants or bonds *to be redeemed* and the date on which payment will be made. *If the addresses of the holders of all bonds or warrants to be redeemed are not known, the county treasurer shall publish notice of redemption once in a newspaper published in the county.* On the date fixed for redemption interest shall cease."

Section 25. **Refunding bonds.** (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for such purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

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(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of such bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that such an issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Funds so deposited must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. Such securities must mature or be callable at the option of the holder on such dates and bear interest at such rates and be payable on such dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon such redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal thereof or interest thereon due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

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(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on [the effective date of this act] only if:

(a) one-third or more of the term for which such bonds were issued has expired; or

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which such bonds are payable.

Section 26. Section 7-12-4101, MCA, is amended to read:

"7-12-4101. Definitions. Unless the context indicates otherwise, as used in this part and part 42, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means any person or officer who is clerk of the council.

(4) "City council" means any body or board that is the legislative department of the government of the city.

(5) "City engineer" means any person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means any person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means:

(a) the compensation of the city engineer for work done by him;

(b) the cost of printing and advertising as provided in this part and part 42;

(c) the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part;

(d) the expenses of making the assessment for any work authorized by this part;

(e) interest on warrants of the city issued to pay costs of improvements;

(f) costs of issuance of bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorneys' and financial consultants' fees, a premium for bond insurance, and any price paid by the original purchaser of the bonds that is less than the face amount thereof;

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(g) interest to accrue on bonds or warrants of the special improvement district before assessments levied in the district are collected in amounts and at times sufficient to pay such interest; and

(h) a reasonable administrative fee payable to the city for the creation and administration of the district by the city, its officers, and employees.

(8) "Main street" means such actually opened street as bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) which the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having any frontage on either of two intersecting streets halfway from the intersection to the next main street or, when no main street intervenes, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in this part and part 42 and also the construction, reconstruction, and repair of all or any portion of work."

Section 27. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants *or bonds.*

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for *acquiring by purchase,* building, constructing, *or* maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for *acquiring by purchase or* building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

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(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the *acquisition,* construction, or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water;

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(f) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(g) maintain, preserve, and care for any and all of the improvements herein mentioned.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may *not* be included in the special improvement district if *40%* of those property owners *protest the creation* of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 28. Section 7-12-4104, MCA, is amended to read:

"7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; *and*

(d) specify the method or methods by which the costs of the improvements will be assessed against property in the district.

(3) When any improvement is to be made in paving, the city or town council may, in describing the general character of *it in the resolution,* describe several kinds of paving."

Section 29. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed such resolution, the council must give notice of the passage of such resolution of intention.

(2) The notice must be published for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three

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public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or the improvements so proposed to be made, state the estimated cost thereof, *describe generally the method or methods by which the costs of the improvements will be assessed,* and designate the time when and the place where the council will hear and pass upon all *written* protests that may be made against the making *or acquisition* of such improvements or the creation of such district. *The* notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. *If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.*"

Section 30. Section 7-12-4109, MCA, is amended to read:

"**7-12-4109. Extension of proposed district.** The city council may charge the expenses of the work or improvement to lots not fronting on the improvement and which the council in its resolution of intention declares to be, *together with the lots abutting the improvement,* the *property* benefited by the work or improvements whenever:

(1) the contemplated work of improvement, in the opinion of the council, is of more than local or ordinary public benefit; or

(2) the total estimated costs and expenses thereof, according to estimates furnished by the city engineer, would exceed one-fifth of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll."

Section 31. Section 7-12-4110, MCA, is amended to read:

"**7-12-4110. Protest against proposed work or district.** (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both.

(2) Such protest must be in writing, *identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must* be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within said 15-day period. Said clerk shall endorse thereon the date and hour of its receipt by him."

Section 32. Section 7-12-4113, MCA, is amended to read:

"**7-12-4113. Sufficient protest to bar proceedings — exceptions.** (1) Except as provided in subsections (2) and (3), no further proceedings shall be taken for a period of 6 months from the date when said protest shall have been received by said clerk of the city or town council or commission when:

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(a) the council or commission finds that such protest is made by the owners of *property in the district to be assessed for* more than 50% of the *cost of* the proposed work, *in accordance with the method or methods of assessment described in the resolution of intention*; or

(b) the cost thereof is to be assessed upon the property within an extended district and the council or commission finds that such protest is made by the owners of more than 50% of the area of the property to be assessed for said improvements.

(2) The council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface when the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a continuous distance of three blocks or more running at a right angle (or substantially so) with the single cross block so proposed to be paved.

(3) In case the improvement is the construction of a sanitary sewer, such protest may be overruled by an affirmative vote of a majority of the members of the council or commission unless such protest is made by the owners of *property in the district to be assessed for* more than 75% of the *cost of the district, in accordance with the methods of assessment described in the resolution of intention*, in which event the protest must be sustained as to the construction of such sanitary sewer."

Section 33. Section 7-12-4123, MCA, is amended to read:

"7-12-4123. Manner of making demands for incidental expenses. All demands for incidental expenses mentioned in 7-12-4101(7), *except the administrative fee of the city and interest payable on warrants or bonds of the district,* shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant."

Section 34. Section 7-12-4145, MCA, is amended to read:

"7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall thereupon return to the proper parties the bid securities corresponding to the bids so rejected.

(2) The bid securities accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into either by said lowest bidder or by the owners of over 75% of the frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements as hereinafter provided, then the bid securities accompanying his bid and the amount therein mentioned shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund."

Section 35. **Purchase of existing improvement.** If the proposed improvement consists of the purchase of an existing improvement, the city council may, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of the improvement, upon such terms as it considers just, without

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advertising for bids or proposals. However, the total purchase price of the existing improvement may not exceed the amount set forth in the notice required by 7-12-4106.

Section 36. Section 7-12-4161, MCA, is amended to read:

"7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of making *or acquiring* any of the improvements provided for in this part, *including incidental expenses,* the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 *for each improvement to be made or acquired for the benefit of the district.*

(2) *The city council may use one or any combination of methods of assessment in a single special improvement district, and if more than one improvement is undertaken, each lot or parcel of land in the district need not be assessed for the cost of all the improvements.*"

Section 37. Section 7-12-4162, MCA, is amended to read:

"7-12-4162. Assessment of costs — area option. (1) The city council or commission shall assess the entire cost of *an improvement* against *benefited property in* the district, each lot or parcel of land *assessed* within such district to be assessed for that part of the whole cost which its *assessable* area bears to the *assessable* area of *all benefited lots or parcels in* the district, exclusive of streets, avenues, alleys, and public places. *For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.*

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the *benefited* property in the district.

(3) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other *benefited* land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other *benefited* land within the district shall bear."

Section 38. Section 7-12-4163, MCA, is amended to read:

"7-12-4163. Assessment of costs — frontage option. (1) The city council or commission shall assess the cost of *an improvement* against *benefited lots or parcels in* the district, each lot or parcel of land within such district bordering or abutting upon a street or streets whereon or wherein

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the improvement has been made to be assessed in proportion to the lineal feet abutting or bordering the same.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the *benefited* property in the district."

Section 39. Section 7-12-4164, MCA, is amended to read:

"7-12-4164. Assessment of costs — utility service connections — option. *The* city council or commission may assess utility service connections upon a lump sum based on the bid price in the improvement district contract and *assess* only the lots, tracts, or parcels of land served by the utility connection or connections within the special improvement district, so long as such assessment is equitable."

Section 40. Section 7-12-4165, MCA, is amended to read:

"7-12-4165. Assessment of costs — offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each *benefited* tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing on-site parking space on any parcel of land within the district."

Section 41. Section 7-12-4169, MCA, is amended to read:

"7-12-4169. Incidental expenses considered as cost of improvements. (1) The costs and expenses connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; *and the other incidental*

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expenses described in 7-12-4101(7) shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

(2) The costs of any improvement may, at the option of the municipal governing body, include an amount not to exceed 5% of the principal amount of any bonds or warrants to be issued, which shall be deposited in the revolving fund created in 7-12-4221."

Section 42. Section 7-12-4176, MCA, is amended to read:

"7-12-4176. Resolution for tax levy upon district property. (1) To defray the cost of making *or acquiring* improvements in any special improvement district or of acquiring property for opening, widening, or extending any street or alley or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all *benefited* property in any district created for such purpose, using for a basis for assessment the *method or* methods set forth in 7-12-4161 through 7-12-4165 *and described in the resolution of intention.*

(2) Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, the amount of each partial payment to be made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk."

Section 43. Section 7-12-4177, MCA, is amended to read:

"7-12-4177. Notice of resolution for tax levy — protest and hearing. (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office and subject to inspection for a period of *10* days, shall be:

(a) published at least once in a newspaper published in the city or town;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (such lands must be identified and the mailing address determined from the last completed assessment roll for state, county, and school district taxes); and

(c) mailed to such other persons known to the clerk to have an ownership interest in the property.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council. The time for such hearing shall not be less than *10* days after the publication *and mailing* of such notice."

Section 44. Section 7-12-4179, MCA, is amended to read:

"7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining *each of* the improvements shall be paid by assessing *the benefited properties of* the district under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.

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(2) It is the duty of the council to estimate, as nearly as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining the improvements within the several districts.

(3) The resolution levying assessments to defray the cost of maintenance of the improvement shall be prepared and certified in the same manner as a resolution levying assessments for making improvements in the special improvement district.

(4) The council may change by resolution, not more than once a year, the boundaries of any maintenance district, but the change of boundaries may not affect indebtedness existing at the time of the change."

Section 45. Section 7-12-4188, MCA, is amended to read:

"7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable *in installments as follows:*

(a) one-half of the payment on or before 5 p.m. on November 30 of each year*; and*

(b) one-half of the payment on *or before* 5 p.m. on May 31 of the following year.

(2) In the event the same are not paid on or before said *dates*, the same shall be subject to the same interest and penalties for nonpayment as delinquent property taxes under 15-16-102."

Section 46. Section 7-12-4189, MCA, is amended to read:

"7-12-4189. Simple interest on assessments. (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest shall be charged *at an annual rate not exceeding the sum of ½ of 1% a year plus the average interest rate payable on the outstanding bonds or warrants of the special improvement district.*

(2) The treasurer, in collecting such special assessment taxes if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment. If such assessment be payable in installments, the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid."

Section 47. Section 7-12-4190, MCA, is amended to read:

"7-12-4190. Payment of assessments in installments. *(1)* The payment of assessments to defray the cost of *acquiring or* constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years.

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(2) If the bonds of the special improvement district are issued as serial bonds, the assessments must be payable in equal annual installments. If the bonds are issued as amortization bonds, the assessments must be payable in equal annual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable."

Section 48. **Change in outstanding principal of district — relevy of assessments.** If proceeds of the bonds or warrants of the special improvement district, including investment income thereon, are applied to the redemption and prepayment of such bonds or warrants, as provided in 7-12-4205 and 7-12-4206, or if refunding bonds are issued pursuant to [section 58] and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The city council shall reassess and relevy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of 7-12-4176 through 7-12-4178.

Section 49. Section 7-12-4201, MCA, is amended to read:

"**7-12-4201. Use of bonds and warrants.** All costs and expenses incurred in the *acquisition or* construction of any improvements specified in part 41 in any improvement district *or incurred in the issuance of the bonds or warrants of the district, including incidental expenses,* shall be paid for by special improvement district bonds or warrants. The city or town council shall provide for making payments for improvements in any special improvement district by the method provided in 7-12-4204 and 7-12-4205."

Section 50. Section 7-12-4203, MCA, is amended to read:

"**7-12-4203. Details relating to special improvement district bonds and warrants.** (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the governing body of the municipality, on such dates as the governing body prescribes. Such warrants or bonds shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years.

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(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the city council, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest."

Section 51. **Definition of forms of bonds.** As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Amortization bonds" means the form of bonds on which:

(a) a part of the principal must be paid each time interest becomes payable;

(b) the part payment of principal increases at each installment in the same amount that the interest decreases;

(c) the combined interest and principal due on each due date remains the same until the bonds are paid;

(d) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(e) the initial payment may be larger than subsequent payments if such increase represents interest accrued over an additional period not greater than 6 months.

(2) "Serial bonds" means the form of bonds that are payable in annual installments and on which the amount maturing each year may not be more than three times the principal amount of bonds maturing in any previous year.

Section 52. Section 7-12-4204, MCA, is amended to read:

"**7-12-4204. Procedure to issue bonds and warrants.** (1) The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the *improvements* which is to be assessed against *benefited* property within the district, to the highest and best bidder therefor for cash *at a price,* including interest thereon *to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than the face value thereof if it determines that such sale is in the best interests of the district and the city.*

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or an agency, instrumentality, corporation, or department thereof.

(3) In all other cases, the provisions of 7-7-4251 through 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-4205, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants."

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Section 53. **Pooling of bonds of districts in city.** (1) If the city council determines by resolution that the pooling of bonds of more than one special improvement district of the city is in the best interest of the city and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the districts combined in a single offering. Such bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts.

Section 54. Section 7-12-4205, MCA, is amended to read:

"7-12-4205. Disposition of bond or warrant proceeds. (1) The city or town council shall use the proceeds of such sale in making payment *for the cost of the improvements. Payments to contractors* may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

(2) *During the construction of the improvements, all* interest earned on the investment of bond or warrant proceeds must be credited to the *construction account of the* improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given."

Section 55. Section 7-12-4206, MCA, is amended to read:

"7-12-4206. Redemption of bonds and warrants. (1) *Special improvement district* warrants or bonds shall be redeemed *on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-4205, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants are subject to redemption and prepayment at the option of the city, in order of registration, on any interest payment date.*

(2) The date of redemption shall be fixed by the treasurer and may not be less than 10 days after the date of publication or *mailing* of notice, and on the date so fixed, interest ceases. The treasurer shall give written notice to the holders of the warrants or bonds *to be redeemed*, if their addresses are known, of the number of warrants or bonds *to be redeemed* and the date on which payment will be made. *If the addresses of the holders of all bonds or warrants to be redeemed are not known, the treasurer shall publish notice of redemption once in a newspaper published in the city."*

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Section 56. **Refunding bonds.** (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for such purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of such bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that such an issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Funds so deposited must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. Such securities must mature or be callable at the option of the holder on such dates and bear interest at such rates and be payable on such dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon such redemption date; and

(iii) any redemption premium.

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(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal thereof or interest thereon due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on [the effective date of this act] only if:

(a) one-third or more of the term for which such bonds were issued has expired; or

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which such bonds are payable.

Section 57. **Codification instruction.** (1) Sections 6, 16, 17, 20, 22, and 25 are intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to sections 6, 16, 17, 20, 22, and 25.

(2) Sections 35, 48, 51, 53, and 56 are intended to be codified as an integral part of Title 7, chapter 12, parts 41 and 42, and the provisions of Title 7, chapter 12, parts 41 and 42, apply to sections 35, 48, 51, 53, and 56.

Section 58. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

CHAPTER NO. 666

[HB 891]

AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS 70-30-110, 70-30-203, 70-30-207, AND 70-30-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken — greatest public good — least private injury. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private

injury and subject to the provisions of 70-30-206. The state or its agents in charge of such public use may, *after giving 30 days' written notice to the owners and persons in possession of the land,* enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice. *Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of his land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of such information furnish written notice to such persons.*"

Section 2. Section 70-30-203, MCA, is amended to read:

"**70-30-203. Contents of complaint.** The complaint must allege:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

(5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract *and a statement that the interest sought is the minimum necessary interest.* All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

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Section 3. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners — affidavit — compensation. (1) Within *30* days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) that he is possessed of sufficient knowledge of the English language;

(b) that he is a resident of a county within the judicial district in which the action is pending;

(c) that he is not related within the sixth degree to any party; and

(d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 a hearing day, including expenses.

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The condemning party shall pay the compensation of the commissioners nominated."

Section 4. Section 70-30-322, MCA, is amended to read:

"70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the *owner or his* successor in interest shall *be notified by the seller by certified mail and shall* have *a 30-day* option *from the date of a sale provided for in 70-30-321* to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at *the* sale. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest."

Approved April 30, 1985.

CHAPTER NO. 667

[SB 28]

AN ACT PROVIDING FOR A 2-YEAR EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A COMPACT ONLY IF LEGALLY NECESSARY; PROVIDING AN ALTERNATE STATEMENT OF CLAIM FOR RESERVED RIGHTS NOT YET PUT TO USE; SPECIFYING THE INFORMATION RELATING TO RESERVED RIGHTS TO BE INCLUDED IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS UNRESOLVED BY THE COMPACT COMMISSION; REQUIRING THE COMMISSION TO MAKE STATUS REPORTS TO THE WATER JUDGE; AMENDING SECTIONS 85-2-217, 85-2-224, 85-2-231, 85-2-233, 85-2-234, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to

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generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, *1987*, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, *1987*, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-224, MCA, is amended to read:

"85-2-224. Statement of claim. (1) The statement of claim for each right *arising under the laws of the state and for each right reserved under the laws of the United States which has been actually put to use* shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) *Any* claimant *filing a statement of claim under subsection (1)* shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States which have not yet been put to use shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water claimed;

(d) the priority date claimed;

(e) the laws of the United States on which the claim is based; and

(f) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief."

Section 3. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary decree. (1) The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a) the statements of claim before the water judge;

(b) the data submitted by the department;

(c) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d) any additional data obtained by the water judge. The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible. This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree if such a decree is necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(3) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

(4) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree."

Section 4. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

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(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

Section 5. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by 85-2-221 to file

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a claim for an existing right, of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, *and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.*

(4) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, *federal agency, and Indian tribe* named in the decree are based.

(5) For each person who is found to have an existing right *arising under the laws of the state of Montana*, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate, and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(6) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree shall state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702."

Section 6. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the

Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana *and* any affected tribal governing body, *and approval by the appropriate federal authority.*

(3) Upon its *ratification* by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, *and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration.* However, if approval of the state legislature and tribe has not been accomplished by July 1, *1987*, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within *6 months*. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 7. Section 85-2-704, MCA, is amended to read:

"**85-2-704. Termination of negotiations.** *(1)* The commission or any *negotiating tribe or federal agency* may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within *6 months* of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties."

Section 8. **Status reports to chief water judge.** (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1985.

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CHAPTER NO. 668

[SB 54]

AN ACT TO MAKE IT A MISDEMEANOR TO PURPOSELY OR KNOWINGLY ABUSE, NEGLECT, OR EXPLOIT CERTAIN PERSONS 60 YEARS OF AGE OR OLDER; AMENDING SECTIONS 53-5-503 AND 53-5-525, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-5-503, MCA, is amended to read:

"53-5-503. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person *without lawful authority. A declaration made pursuant to [section 3 of House Bill No. 228] constitutes lawful authority.*

(2) "Exploitation" means the *unreasonable* use of an older person, his money, or his property to the advantage of another *by means of duress, menace, fraud, or undue influence.*

(3) "Long-term care facility" means a facility defined in 50-5-101(20).

(4) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(5) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's welfare to care for an older person by failing to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person.

(6) "Older person" means a person who is at least 60 years of age. *For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.*

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 2. Section 53-5-525, MCA, is amended to read:

"53-5-525. Penalties. *(1)* Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of a misdemeanor *offense* and upon conviction is punishable as provided in 46-18-212.

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(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Approved April 30, 1985.

CHAPTER NO. 669

[HB 945]

AN ACT TO ESTABLISH A STATE LOTTERY AND PROVIDE FOR ITS ADMINISTRATION; AMENDING SECTION 23-5-202, MCA; PROVIDING EFFECTIVE DATES; AND PROVIDING THAT THE PROPOSED LOTTERY LAW BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 20] may be cited as the "Montana State Lottery Act of 1985".

Section 2. **Purpose.** (1) The purpose of [sections 1 through 20] is to allow lottery games in which the player purchases from the state, through the administrators of the state lottery, a chance to win a prize. [Sections 1 through 20] do not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played.

(2) The administration and construction of [sections 1 through 20] must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, [sections 1 through 20] must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state but which is not a lottery game within the scope of this section and within the definition of "lottery game".

Section 3. **Definitions.** As used in [sections 1 through 20], the following definitions apply:

(1) "Commission" means the state lottery commission created by [section 4].

(2) "Director" means the director appointed by the governor under [section 6] to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to [sections 1 through 20].

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games, except games prohibited by Title 23, chapter 5, part 1; lotteries prohibited by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

Section 4. **State lottery commission — allocation — composition — compensation — quorum.** (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

Section 5. **Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every

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3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) determine the price of each ticket or chance and the number and size of prizes;

(4) provide for the conduct of drawings of winners of lottery games;

(5) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(6) study the possibility of working with other lottery states to offer regional lottery games;

(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(8) adopt rules necessary to carry out [sections 1 through 20].

Section 6. **Director — appointment — compensation — qualifications.** (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of commerce.

Section 7. **Powers and duties of director.** (1) The director shall:

(a) administer the operation of the state lottery in accordance with [sections 1 through 20] and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to [sections 1 through 20] and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and

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installation of games, for consultant services, and for promotion of the lottery. All contracts must be made in accordance with state law. No contract is legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm. When a contract is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

Section 8. **Assistant director for security — qualifications — duties.** (1) The director shall appoint an assistant director for security.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering [sections 1 through 20].

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

Section 9. **Ticket or chance sales agents — licenses.** (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

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(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of [sections 1 through 20] or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

Section 10. **Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm or governmental agency auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

Section 11. **Disclosure of odds.** The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the

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odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

Section 12. **State lottery fund.** There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

Section 13. **Disposition of revenue.** (1) As near as possible to 45% of the money paid for tickets or chances in each separate state lottery game must be paid out as prize money for the game.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 12] to the superintendent of public instruction for distribution as equalization aid to the retirement funds required by 20-9-501. [The net revenue is statutorily appropriated, as provided in [section 2 of House Bill 12].] The superintendent of public instruction shall establish the dollar amount per ANB by dividing the net lottery revenue for the school year by the total state ANB in the prior school year. He shall then notify each county superintendent by the fourth Monday of July of the total retirement fund equalization aid available to the county, as calculated separately for elementary and high school districts using the prior year's ANB and prorated as specified in 20-9-501(6) for any joint school district, and each county superintendent must use such amounts to reduce the total retirement fund levy requirement for elementary school districts and the total retirement fund levy requirement for high school districts. The superintendent of public instruction shall then distribute by state warrant the total amount of retirement fund equalization aid for each county by October 1 of the school fiscal year.

Section 14. **Felony and gambling-related convictions — ineligibility for lottery positions.** No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment to any such position, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency.

Section 15. **Conflict of interest.** No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any

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gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

Section 16. **Drawings for and payment of prizes — unclaimed prizes.** (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) Prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 10 years, except that each installment payment must be at least $20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

Section 17. **Disclosures by gaming suppliers.** (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers,

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directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest or connection with any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

Section 18. **Annual audit.** The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out

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of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house.

Section 19. **Audit of lottery security.** (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

(a) personnel security;

(b) lottery sales agent security;

(c) lottery contractor security;

(d) security of manufacturing operations of lottery contractors;

(e) security against ticket or chance counterfeiting and alteration and other means of fraudulently winning;

(f) security of drawings among entries or finalists;

(g) computer security;

(h) data communications security;

(i) database security;

(j) systems security;

(k) lottery premises and warehouse security;

(l) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game;

(p) security of drawings in games whenever winners are determined by drawings;

(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

Section 20. **Penalties.** It is a misdemeanor, punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

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(1) require an employee to sell lottery tickets or chances in violation of [section 9(9)];

(2) violate [section 9(11)];

(3) sell a lottery ticket or chance to a person under 18 years of age;

(4) violate [subsection (3) or (4) of section 10];

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of [section 14];

(6) violate [section 15];

(7) violate [section 17]; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

Section 21. Section 23-5-202, MCA, is amended to read:

"23-5-202. Application. This part shall not apply to the provisions of part 4 of this chapter, *to [sections 1 through 20]*, or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings."

Section 22. **Initial appointment and terms of commissioners.** Initial appointments to the commission must be made within 30 days after [the effective date of sections 1 through 25]. Two of the initial appointees shall serve for 2 years, two shall serve for 3 years, and one shall serve for 4 years.

Section 23. **Initial duties of commission — lottery study — first game.** (1) The commission shall immediately conduct an initial study of other state lotteries.

(2) The commission shall begin the operation of state lottery games at the earliest practicable time and in any event no later than July 1, 1987.

Section 24. **Temporary state treasury line of credit for expense of starting state lottery.** There is a temporary line of credit that may be drawn by the director of the state lottery from the state general fund and deposited in the state lottery fund, in the amount of $1,500,000. This temporary line of credit may be drawn upon only during the first 12 months after the effective date of [sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The director may draw upon all or part of this temporary line of credit. Any funds advanced under the temporary line of credit must be repaid out of the lottery's net revenue to the general fund within 1 year of the advance, and no net revenue may be paid out under [section 13(3)] until all advanced funds are repaid. Interest must be paid at an annual simple interest rate of 10% on funds advanced, commencing on the day funds are advanced and until the funds are repaid.

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Section 25. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. **Effective date.** (1) If approved by the electorate, sections 1 through 25 of this act are effective January 1, 1987.

(2) This section and section 27 are effective on passage.

Section 27. **Submission to electorate.** The question whether sections 1 through 25 of this act will become effective shall be submitted to the electors of the State of Montana at the general election to be held in November 1986 by printing on the ballot the full title of this act and the following:

☐ FOR establishing a state lottery.

☐ AGAINST establishing a state lottery.

Section 28. **Coordination instruction.** The bracketed language in section 13 is effective only if House Bill 12 of the 49th legislature is passed and approved. In addition, if House Bill 12 is passed and approved, a reference to section 13 is included in the subsection of House Bill 12 listing all sections containing statutory appropriations.

Approved April 23, 1985.

CHAPTER NO. 670

[HB 843]

AN ACT TO REVISE THE LAWS RELATING TO PUBLIC ASSISTANCE; PROVIDING FOR ADMINISTRATION, ELIGIBILITY, AND BENEFITS RELATING TO GENERAL RELIEF ASSISTANCE PROVIDED BY COUNTIES OR BY THE STATE WHEN SUCH A PROGRAM HAS BEEN ASSUMED BY THE STATE; AMENDING SECTIONS 39-71-118, 45-6-301, 53-2-603, 53-2-802, 53-2-811, 53-3-103, AND 53-3-307, MCA; REPEALING SECTIONS 53-2-307 THROUGH 53-2-310, 53-2-604, 53-2-605, 53-3-101, 53-3-102, 53-3-104 THROUGH 53-3-107, 53-3-202 THROUGH 53-3-204, 53-3-301, 53-3-302, AND 53-3-306, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) The legislature, in order to implement the provisions of Article XII, section 3, of the Montana constitution, finds that certain persons are in need of assistance because of misfortune and must be provided with certain assistance through programs for general relief. These programs are to be efficiently administered by local county welfare boards or, whenever responsibility for local welfare programs has been assumed by the state of Montana, by the department of social and rehabilitation services. General relief, along with other assistance programs, is

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made available to provide basic necessities that provide minimum subsistence compatible with decency and health and to provide financial assistance for medical services necessary for serious medical conditions. General relief medical assistance is not intended to provide catastrophic medical insurance to nonindigent persons.

(2) The legislature finds that assistance under the general relief program should not be available to those persons who have either adequate income or resources of their own or who are able-bodied. When benefits and services are available through other federal or state assistance programs, general relief should not be provided in duplication of such other assistance.

(3) The legislature further finds that the purposes of the general relief program must be implemented only to the extent necessary and allowable by the mandates of Article VIII, sections 12 and 14, of the Montana constitution, regarding financial accountability and expenditure by appropriation.

Section 2. **Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Able-bodied" means the condition of a person who is not infirm.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "General relief" means, in accordance with this chapter, a program of public assistance for basic necessities and medical needs to those persons determined to be eligible for that assistance.

(5) "Household" means all persons who by choice, necessity, or legal relationship are mutually dependent upon each other for basic necessities and who reside in the same residence.

(6) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits reasonably certain to be received by or available to a household during the month of the receipt of the income.

(7) "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter. Except as provided otherwise in [sections 4 and 10], the terms do not include able-bodied persons under the age of 50 unless they have dependent minor children living in the household.

(8) "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental handicap that significantly impairs the person's ability to be employed.

(9) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement,

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inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

(10) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

(11) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(12) "Serious medical condition" means a physical condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary.

Section 3. **Responsibility for general relief.** (1) The county boards of public welfare and the department, in accordance with this chapter and other relevant statutes, are responsible for the provision of general relief to indigent or misfortunate persons as follows:

(a) Counties without state-assumed welfare services shall provide general relief consistent with their duties as specified in Title 53, chapter 2, parts 3 and 7, and this chapter.

(b) In counties with state-assumed welfare services, general relief must be provided by the department and must be consistent with its duties as specified in Title 53, chapter 2, part 8, and this chapter.

(2) In counties without state-assumed welfare services, general relief must be paid from the county poor fund as authorized in 53-2-321 through 53-2-323.

(3) In counties with state-assumed welfare services, general relief must be paid from and may not exceed money available through:

(a) a general appropriation for such purpose;

(b) county mill levies as provided for in 53-2-813; and

(c) federal or other assistance.

Section 4. **Eligibility for general relief.** (1) A person or persons, constituting a household, may receive general relief assistance for basic necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief if the household income does not exceed that set forth in the following table:

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Number of Persons in Household	Monthly Income Standard	
	Fiscal 1986	Fiscal 1987
1	$212	$219
2	284	296
3	358	372
4	432	449
5	506	526
6	580	603
7	653	679
8	727	756
9	800	832
10 or more	874	909

(3) Able-bodied persons under the age of 35 years without dependent minor children living in the household are not eligible for nonmedical general relief assistance.

(4) (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

(7) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than $1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

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(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

(12) An alien determined to be illegally within the United States is not eligible for general relief.

Section 5. **Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and [section 4]. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in [section 4(7)].

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in [section 4(2)] is eligible for such medical assistance.

(6) In a county with state-assumed welfare services:

(a) covered medical services must be provided at no cost to the person residing in a household if the average household monthly income that is reasonably certain to be received in a 12-month period beginning with the month the medical service was provided does not exceed the amount in [section 4(2)];

(b) a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of that set forth in the following table:

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Family Size	Monthly Income Level
1	$ 314
2	375
3	400
4	425
5	501
6	564
7	624
8	685
9	744
10	804
11	864
12	923
13	983
14	1,042
15	1,102
16	1,162

(c) if the average household monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided is between the amount in [section 4(2)] and the monthly income level set forth in subsection (b), a household must first incur covered medical costs equal to the difference between its average monthly income and the monthly income level in subsection (b) before medical service is provided.

Section 6. **Selection of medical providers.** In arranging for medical care for those unable to provide it for themselves, the county board of public welfare or the department may select a medical provider.

Section 7. **Emergency assistance.** (1) Emergency assistance may be provided to those persons whose income and resources meet the criteria set forth in [section 4] but are not otherwise eligible for general relief assistance.

(2) Emergency assistance is limited to the following:

(a) food, for no more than 3 days in any 12-month period, and only if food stamps are unavailable for reasons other than fraud;

(b) transportation to return to the county or state of residence or origin; and

(c) shelter, for no more than 3 days in any 12-month period.

(3) In state-assumed counties, the total amount expended for this program of emergency assistance shall not exceed $100,000 for state fiscal year 1986 and $100,000 for state fiscal year 1987. Nonstate-assumed counties may adopt a plan of emergency assistance not inconsistent with this section.

Section 8. **Application for other state and federal programs — interim relief.** If other federal or state programs of assistance are reasonably available to meet the needs of a household, an applicant must apply

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for those programs before general relief may be provided. A household may be provided general relief after initial application for other programs of assistance. If denied such other assistance, the applicant must pursue available administrative appeals for those programs to the final administrative appeal level. If the applicant becomes eligible for other assistance covering the same period of time that interim general relief is provided, such interim relief must be repaid to the department or offset from lump sums or retroactive payments from other programs of assistance.

Section 9. **Fraud and recovery of overpayments.** (1) The department shall deny general relief for a reasonable period of time to any household determined to have received any assistance by means of fraud.

(2) The department or its agent may recover or offset any amounts of general relief made available to a household which, because of fraud or mistake, are above the amounts that should have been provided.

Section 10. **Period of eligibility.** (1) The period of eligibility for receipt of general relief for basic necessities is 1 month, except as provided in subsections (2) and (3). A person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

(2) Able-bodied persons age 35 through 49 without dependent minor children living in the household are eligible for no more than 3 months of nonmedical general relief assistance within any 12-month period, except that assistance received prior to July 1, 1985, shall not be counted. For these persons who continuously meet eligibility criteria, the period of eligibility will begin 60 days after the date of application.

(3) Eligibility for general relief medical assistance terminates when the serious medical condition of the person has been treated.

(4) The period of eligibility for any type of general assistance terminates at any time the county welfare board or the department determines that the household:

(a) no longer meets the applicable eligibility requirements; or

(b) received general relief by means of fraud or mistake.

Section 11. **Form of relief.** The choice as to the form or forms of relief provided is at the discretion of the county welfare department in counties without state-assumed welfare services or the department if the state has assumed responsibility for the welfare services in a county.

Section 12. **Application.** (1) Application for general relief must be made in writing to a county welfare department or the department's local office of human services on forms provided for that purpose.

(2) A person applying in a county other than that of his residency must have his application referred to the county of his residency as soon as possible.

Section 13. **County of financial responsibility.** (1) The county responsible for benefits provided under this chapter is the county of residence of the person making application for assistance.

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(2) Medical costs covered by general relief medical assistance are the financial responsibility of the treated person's county of residence. Institutionalization for medical services does not change such residency.

(3) General relief medical assistance for a transient is the responsibility of the county in which the nonresident's illness or injury requiring medical attention initially occurred.

Section 14. **Scope of general relief medical assistance.** (1) General relief medical assistance is limited to those services determined necessary to treat a person's serious medical condition. Assistance may not exceed the scope or duration provided under the medicaid program pursuant to Title 53, chapter 6, part 1, and rules adopted by the department to administer the program.

(2) General relief medical assistance in a county without state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts determined by the county welfare board.

(3) General relief medical assistance in counties with state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts not to exceed payments under the medicaid program. Services must be limited to the least costly method of alleviating the serious medical condition.

(4) General relief medical assistance is limited to covered medical needs not met by other services or benefits available to the person. Available services or benefits include but are not limited to health and accident insurance, veterans' benefits, industrial accident benefits, medicare and medicaid benefits, and other liable third parties.

Section 15. **Amount of general relief for basic necessities.** (1) In a county without state-assumed welfare services, the amounts of general relief for basic necessities must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief for basic necessities available to an eligible household is the amount listed for the same size household in the table in [section 4(2)], less income and resources not excluded in [section 4(7)].

Section 16. **Burial of deceased indigent.** (1) In a county without state-assumed welfare services, the county welfare board shall provide for the burial of a deceased indigent.

(2) In a county with state-assumed welfare services, the department shall provide for the burial of a deceased indigent.

Section 17. **Confidentiality.** (1) Any personal information provided to or obtained by the county welfare department or the department for the purposes of this chapter is confidential.

(2) Disclosure of confidential information concerning applicants for general relief is restricted to purposes directly connected with the administration of programs administered by the department except as otherwise provided in this section.

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(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of such release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, and third-party medical recovery.

(6) Confidential information may be released if so directed by a court order.

Section 18. **Contested case hearing.** (1) Except as provided in subsection (2), a hearing must be held on request of any person who is dissatisfied with:

(a) an action taken on an application;

(b) an eligibility determination; or

(c) the amount or condition of payment.

(2) A hearing need not be granted if either state or federal law requires automatic grant adjustments for classes of persons unless the reason for an individual appeal is incorrect grant computation.

(3) The applicant or recipient must be informed of the right to request a hearing at the time any adverse action affects his eligibility.

(4) A hearing must be requested within 90 calendar days from the date of notice of adverse action. An applicant is considered to have been given notice on the date the notice is mailed by certified mail or personally served.

(5) The hearing must be held in:

(a) the person's county of residence;

(b) the county where application is made if residency is unestablished; or

(c) Lewis and Clark County if a real party in interest requests a hearing for an applicant in any county with state-assumed welfare services.

(6) When a real party in interest requests a hearing for an applicant, venue for judicial review of the final administrative action is Lewis and Clark County if financial responsibility is alleged to be with a state-assumed county welfare program.

Section 19. **Department to adopt rules.** The department shall adopt such rules as are necessary to implement this chapter. Rules adopted may include those necessary for application, eligibility, residency, fraud, recovery of overpayments; the form, amount, scope, and duration of relief; confidentiality; burial of deceased indigents; and definition of terms. The department may not adopt rules to govern the amounts of relief to be provided

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in counties where the department has not assumed responsibility for the direct administration of welfare services.

Section 20. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of *53-3-303* through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 21. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

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(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance *provided under Title 53 by a state or county agency, regardless of the original source of assistance*, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 22. Section 53-2-603, MCA, is amended to read:

"53-2-603. Award of public assistance determined after investigation. (1) Upon completion of *an* investigation, the county board shall determine whether the applicant is eligible for public assistance under the

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provisions of this title, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin.

(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in such form as the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require."

Section 23. Section 53-2-802, MCA, is amended to read:

"53-2-802. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(4) "Needy person" is one who is eligible for public assistance under the laws of this state.

(5) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(6) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(7) "State assumption" means the transfer to the department for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through *53-2-306* and public assistance and protective services provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part."

Section 24. Section 53-2-811, MCA, is amended to read:

"53-2-811. Transfer of county public assistance and protective services to state department. (1) All authority granted to the board of county commissioners to establish and operate a public assistance program and provide protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department all powers and duties for public assistance and protective services for children and adults, including

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the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of such transfer, the department shall assume all powers and duties related to public assistance and protective services and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department at least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of the department.

(4) Counties opting for state assumption shall permit the department to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by the department. Counties opting for state assumption shall transfer to the department all materials, *equipment,* and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 25. Section 53-3-103, MCA, is amended to read:

"53-3-103. Subrogation of medical and hospitalization costs for indigent. In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 which relate to medical benefits provided under Title XIX or XX of the Social Security Act apply to medical benefits provided for in this section."

Section 26. Section 53-3-307, MCA, is amended to read:

"53-3-307. County medical assistance not to be paid from state funds — exception. (1) County *general relief* medical assistance under *[section 5]* shall not be entitled to be paid from state funds.

(2) Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim."

Section 27. **Codification instruction.** Sections 1 through 19 are intended to be codified as an integral part of Title 53, chapter 3, and the provisions of Title 53, chapter 3, apply to sections 1 through 19.

Section 28. **Repealer.** Sections 53-2-307 through 53-2-310, 53-2-604, 53-2-605, 53-3-101, 53-3-102, 53-3-104 through 53-3-107, 53-3-202 through 53-3-204, 53-3-301, 53-3-302, and 53-3-306, MCA, are repealed.

Section 29. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 30. **Effective dates.** (1) This act is effective July 1, 1985.

(2) On July 1, 1987, section 7 is repealed unless reenacted by the legislature.

Approved May 6, 1985.

CHAPTER NO. 671

[SB 13]

AN ACT CLARIFYING THAT THE MONTANA ADMINISTRATIVE PROCEDURE ACT DOES NOT APPLY TO UNITS OF LOCAL GOVERNMENT, SCHOOL DISTRICTS, OR ANY OTHER POLITICAL SUBDIVISIONS OF THE STATE; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court has held in recent opinions that the Montana Administrative Procedure Act applies to school districts; and

WHEREAS, it is clear from the language of section 2-4-102(2), MCA, as originally enacted, and from the 1971 official comments of the Administrative Procedures Subcommittee recommending the enactment of the Montana Administrative Procedure Act that the Act was never intended to apply to units of local government, school districts, or any other political subdivisions; and

WHEREAS, substantial confusion could result if the provisions of the Act are continued to be applied to any government entity other than state agencies; and

WHEREAS, it is the intent of the Legislature that the Act be applied only to those agencies of state government provided for in the Act and the belief of the Legislature that the Act was never intended to apply to units of local government, school districts, or any other political subdivisions of the state.

THEREFORE, it is the intent of this bill to clarify that the Montana Administrative Procedure Act does not apply to units of local government, school districts, or any other political subdivisions of this state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) *(a)* "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(ii) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) "Agency" does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

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(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law."

Section 2. **Retroactive application.** Section 1 shall apply as of December 31, 1972, except that proceedings pending on that date are not affected.

Approved May 6, 1985.

CHAPTER NO. 672

[SB 119]

AN ACT PROVIDING THAT ANY FEE FOR CHILD SUPPORT ENFORCEMENT SERVICES BE PAID BY THE PERSON FROM WHOM THE SUPPORT IS COLLECTED RATHER THAN BY THE APPLICANT FOR THE SERVICES; AMENDING SECTION 40-5-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-203, MCA, is amended to read:

"40-5-203. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

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(3) The department may *not* charge *the applicant* a fee as compensation for services rendered in establishment of or enforcement of support obligations. *However, the department may charge a fee to the person from whom the support is being collected. This fee must be in addition to the support payment.* The department shall by rule establish reasonable fees *commensurate with the cost of enforcement support services to be paid by the person from whom the support is being collected. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion.* The department may, upon a showing of necessity, waive or defer any such fee."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 6, 1985.

CHAPTER NO. 673

[SB 291]

AN ACT TO LIMIT STATE-MANDATED AUDITS OF MUNICIPALITIES TO CITIES AND TOWNS HAVING A POPULATION OF MORE THAN 300; AMENDING SECTION 2-7-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns *having a population of more than 300 in the most recent census taken under the direction of congress*;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6); and

(h) fire department relief associations.

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(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

(6) Except as herein provided, the department may not audit a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33. Such district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees. The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest."

Section 2. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 6, 1985.

CHAPTER NO. 674

[SB 419]

AN ACT PROVIDING FOR THE ISSUANCE OF REGULAR LICENSE PLATES CARRYING A DESIGN TO RECOGNIZE THE CENTENNIAL OF MONTANA'S ADMISSION TO STATEHOOD; PROVIDING THAT SPECIAL COMMEMORATIVE CENTENNIAL LICENSE PLATES MAY BE ISSUED FOR AN AMOUNT IN EXCESS OF THE CHARGE FOR REGULAR LICENSE PLATES, WITH THE PROCEEDS OF SUCH SALES TO BE USED FOR MONTANA'S STATEHOOD CENTENNIAL COMMEMORATION; PROVIDING FOR THE ADMINISTRATION OF THE SALE AND ISSUANCE OF SUCH PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Regular issue centennial license plates — design of regular or commemorative plates.** (1) The division of motor vehicles, in issuing license plates under the provisions of 61-3-321, shall provide for the

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issuance of regular license plates carrying a design recognizing the centennial of Montana's 1889 admission to statehood.

(2) The design of the license plates issued under the provisions of [section 2] or this section must be developed in consultation with the Montana statehood centennial office established by House Bill No. 873.

Section 2. **Commemorative centennial license plates.** (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the division may issue commemorative centennial license plates for a different period if requested by the Montana statehood centennial office, at prices to be agreed upon by the division and the office as provided in [section 3].

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be collectors' items only, distinctively marked or colored. Such plates may be designated as not valid for the purpose of licensing motor vehicles within the state; or

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in [section 1], except that they may differ from such regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) The proceeds from the sale of commemorative license plates, after payment of the agreed price to the division, must be used for centennial activities of the office as provided in House Bill No. 873.

(b) The issuance of commemorative license plates must be made at no direct cost to the state.

(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332(8), either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the division.

Section 3. **Administration.** (1) The division of motor vehicles may by rule establish application procedures for the issuance of license plates authorized by [sections 1 through 3]. The rules may provide:

(a) for the issuance of regular license plates with a centennial design to persons wishing to purchase such plates to replace present plates;

(b) for the application for and issuance of commemorative centennial license plates valid for licensing motor vehicles, as authorized by [section 2];

(c) whether commemorative centennial license plates, if issued under [section 2], may be issued as personalized plates under the provisions of Title 61, chapter 3, part 4; and

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(d) other procedures necessary for the proper administration of [sections 1 through 3].

(2) (a) The Montana statehood centennial office may request classes and variations of commemorative license plates, and each type or variation may be issued for a different price.

(b) For the issuance of commemorative license plates, the office shall contract with and provide for payment to the division for the production of such license plates. The contract must establish prices to be paid by the ultimate purchaser for the issuance of commemorative centennial license plates.

Section 4. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the division may designate.

(2) All number plates for motor vehicles shall be issued for a minimum period of 4 years, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the division shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(3) In the case of motorcars and trucks, plates shall be of metal 6 inches wide and 12 inches in length. *The* outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the division.

(4) The distinctive registration numbers shall begin with a number one or with a letter-number combination such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such

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numerals and letters shall be determined by the division, provided that all county and registration numbers shall be of equal height.

(5) For the use of tax-exempt motor vehicles that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

(a) For vehicles owned by the state the division may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature and will be replaced by the division at such time when the physical condition of numbered plates requires same.

(b) For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the division may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number one and be numbered consecutively.

(6) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532 and tax exempt trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" shall appear for plates assigned to vehicles of the motorcycle type.

(7) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(8) For the purpose of this chapter, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite 46;

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Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties shall be assigned numbers by the division as they may be formed, beginning with the number 57."

Section 5. **Termination date.** This act terminates July 1, 1991.

Section 6. **Coordination instruction.** If House Bill No. 873 is not passed and approved, sections 1 through 5 of this act are void.

Approved May 6, 1985.

CHAPTER NO. 675

[HB 14]

AN ACT CREATING A LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS; PROVIDING FOR THE COMMITTEE'S TERMINATION IN 1987; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the 1983 Montana Legislature through adoption of House Joint Resolution No. 19 provided for appointment of an eight-member, equally bipartisan Select Committee on Indian Affairs; and

WHEREAS, House Joint Resolution No. 19 directed the Committee to perform a variety of tasks, including holding hearings to promote better understanding between the tribes and public agencies, acting as a liaison between the Indian people and the Legislature, promoting amicable Indian/non-Indian relations, and keeping informed of state-tribal cooperative agreements; and

WHEREAS, the Legislature appropriated $7,000 to the Committee to fulfill the mandates of its enabling legislation; and

WHEREAS, within this limited budget, the Committee held five meetings and addressed such topics as involuntary commitment of mentally ill tribal members, state-tribal cooperative agreements, and negotiation of Indian reserved water rights; and

WHEREAS, these meetings were well attended by both tribal representatives and state agency personnel; and

WHEREAS, these meetings provided a forum for both Indian and non-Indian people to discuss their concerns before a legislative body; and

WHEREAS, the Committee succeeded in developing good rapport with many tribal representatives; and

WHEREAS, the Indian people in Montana have indicated support for appointment of a legislative committee to continue the work of the 1983-1984 Select Committee on Indian Affairs; and

WHEREAS, it is in the interest of all Montanans that Indian/non-Indian communications and relations be enhanced; and

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WHEREAS, appointment of a legislative committee on Indian affairs would enhance Indian/non-Indian communications, relations, and cooperation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 8], "committee" means the committee on Indian affairs created in [section 2].

Section 2. **Committee on Indian affairs — appointment and composition.** (1) There is a committee on Indian affairs.

(2) The committee consists of two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker of the house. No more than one member from either house may be members of the same party.

(3) Appointments must be made before final adjournment of a regular session.

Section 3. **Term of office.** Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

Section 4. **Vacancies.** (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers.** The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

Section 6. **Meetings and compensation.** (1) The committee shall meet as often as the chairman considers it necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

Section 7. **Staff assistance.** The legislative council shall provide staff assistance to the committee. The legislative council has the same authority of investigation and examination and the same authority to hold hearings on behalf of the committee as it has for other committees under 5-11-106 and 5-11-107.

Section 8. **Duties of the committee.** The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations;

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(2) hold hearings both on and off reservations to promote better understanding between the tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as an available liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations; and

(6) report its activities, findings, recommendations, and any proposed legislation to the legislature before each regular legislative session.

Section 9. **Termination date.** The committee shall terminate upon the convening of the 50th legislature in regular session in 1987.

Section 10. **Appropriation.** There is appropriated for the biennium ending June 30, 1987, $6,000 from the general fund to the legislative council for use by the committee on Indian affairs.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved May 6, 1985.

CHAPTER NO. 676

[HB 224]

AN ACT APPROPRIATING A PORTION OF LONG-RANGE BUILDING PROGRAM BOND PROCEEDS TO THE DEPARTMENT OF ADMINISTRATION TO PROVIDE LOANS FOR THE SPONSOR'S SHARE OF AIRPORT IMPROVEMENT PROJECTS; ESTABLISHING AN ACCOUNT TO RECEIVE THE FUNDS; AMENDING SECTION 67-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation of long-range building program bond proceeds.** There is appropriated $1,700,000 from the long-range building program account to the Department of Administration for the biennium ending June 30, 1987, to provide loans for the sponsor's share of airport improvement projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982, contingent upon the authorization and sale of general obligation bonds by the 49th Legislature and the Board of Examiners, respectively.

Section 2. Section 67-1-301, MCA, is amended to read:

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"67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all moneys received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All such moneys shall be deposited in the state treasury to the credit of the department.

(3) (a) There shall be deposited in the state special revenue fund to the credit of the department of administration, to be used, upon recommendation of the department of commerce, to provide loans to local and state government agencies for airport improvement projects in amounts not to exceed the required sponsor's share of projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982:

(i) a portion, as provided in House Bill 900, Laws of 1983, of the proceeds received from the sale of long-range building program bonds upon the authorization and sale of the bonds by the state and notwithstanding the provisions of Title 17, chapter 7, part 2; and

(ii) all repayments of loans, including interest, made pursuant to subsections (3)(a) and (3)(b).

(b) All loans must:

(i) bear an interest rate that fully retires the long-range building bonds issued under the authorization provided by the 48th legislature;

(ii) mature not later than such bonds; and

(iii) include reimbursement of administrative costs as required by subsection (3)(c).

(c) An amount equal to 1% of the loans provided under subsection (3)(a) may be allocated from the state special revenue fund for administrative purposes.

(4) (a) There shall be deposited in the state special revenue fund to the credit of the department of administration, to be used, upon recommendation of the department of commerce, to provide loans to local and state government agencies for airport improvement projects in amounts not to exceed the required sponsor's share of projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982:

(i) a portion, as provided in [section 1], of the proceeds received from the sale of long-range building program bonds upon the authorization and

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sale of the bonds by the state and notwithstanding the provisions of Title 17, chapter 7, part 2; and

(ii) all repayments of loans, including interest, made pursuant to subsections (4)(a) and (4)(b).

(b) All loans must:

(i) bear an interest rate that fully retires the long-range building bonds issued under the authorization provided by the 49th legislature;

(ii) mature not later than such bonds; and

(iii) include reimbursement of administrative costs as required by subsection (4)(c).

(c) An amount equal to 1% of the loans provided under subsection (4)(a) may be allocated from the state special revenue fund for administrative purposes.

(5) There shall be deposited in the state special revenue fund to the credit of the department the proceeds of 1 cent per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(6) No part of the 1 cent per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded. **(Subsection (3) terminates June 30, 1985—see compiler's comments.)**

Section 3. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date — termination date.** This act is effective on passage and approval. This act terminates June 30, 1987, except that a loan made prior to June 30, 1987, is subject to the provisions of this act notwithstanding the duration of the loan.

Approved May 6, 1985.

CHAPTER NO. 677

[HB 270]

AN ACT CREATING A SELECT COMMITTEE ON HEALTH INSURANCE FOR RETIRED PUBLIC EMPLOYEES; DEFINING THE DUTIES AND POWERS OF THE COMMITTEE; APPROPRIATING FUNDS FOR THE COMMITTEE'S USE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], "committee" means the select committee on health insurance for retired public employees created in [section 2].

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Section 2. **Select committee on health insurance for retired public employees — composition and appointment.** (1) There is a select committee on health insurance for retired public employees.

(2) The committee consists of eight members appointed as follows:

(a) two representatives appointed by the speaker of the house;

(b) two representatives appointed by the republican house leader;

(c) two senators appointed by the president of the senate; and

(d) two senators appointed by the senate minority leader.

(3) No more than two members from each house may be of the same political party.

(4) Members must be appointed by the 90th legislative day of the 49th legislative session.

Section 3. **Term of office — vacancies.** (1) A member of the committee shall serve until the committee terminates as provided in [section 8].

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

Section 4. **Officers — meetings — quorum — compensation.** (1) The committee shall choose from its membership a chairman and vice-chairman.

(2) The committee shall meet upon the call of the chairman or at the request of any four members.

(3) Five members constitute a quorum for the transaction of business.

(4) A member is entitled to compensation and expenses as provided in 5-2-302.

Section 5. **Duties of the committee.** The duties of the committee include but are not limited to:

(1) exploring the possibility of creating a wholly or partially state-funded health insurance program for retired public employees, including an examination of the following policy questions:

(a) Is there a need to provide postretirement health benefits for Montana public employees?

(b) If so, which groups of employees should be entitled to receive these benefits?

(c) What should be the eligibility criteria for receiving postretirement health benefits?

(d) Should health insurance coverage extend to a retiree's spouse or dependent children?

(e) For how long should a retiree be eligible for coverage?

(f) What should be the nature and extent of postretirement health benefits?

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(g) What governmental agency should administer a health insurance program for retirees?

(h) What will be the present and future costs associated with a postretirement health insurance program?

(i) What source will fund these costs?

(2) holding public hearings to gather information and opinions on the topic of providing health insurance for retired public employees;

(3) drafting legislation, if necessary, to implement the committee's recommendations; and

(4) reporting the committee's findings and recommendations to the 50th legislature.

Section 6. **Powers of committee.** In performing the duties provided for in [section 5], the committee may:

(1) contract for actuarial services in consultation with the department of administration;

(2) accept funds from the public employees' and teachers' retirement divisions, the state personnel division of the department of administration, and the Montana university system to obtain actuarial services;

(3) request assistance or data from any state or local government agency; and

(4) subpoena witnesses, books, records, and other documents.

Section 7. **Staff assistance.** The legislative council shall provide staff assistance to the committee.

Section 8. **Termination date.** The committee shall terminate upon the convening of the 50th legislature in regular session in 1987.

Section 9. **Appropriation.** There is appropriated to the Legislative Council for the biennium ending June 30, 1987:

(1) for committee expenses, $8,000 from the state general fund; and

(2) for obtaining actuarial services, $5,000 from the Department of Administration, Personnel Division, group benefit administration account, and $5,000 from the interest income of the Public Employees' Retirement System pension trust fund.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved May 6, 1985.

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CHAPTER NO. 678

[HB 286]

AN ACT TO PROVIDE FOR SPECIAL CIVIL ACTION BY UTILITIES AGAINST CUSTOMERS WHO BYPASS OR TAMPER WITH UTILITY METERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose — remedies cumulative.** It is the purpose of [this act] to impose a substantial civil penalty upon those persons who, at the cost of their fellow citizens, obtain utility services at less than their true value through bypassing or tampering as defined in [section 2]. [This act] does not supersede or replace other remedies provided for in law or equity.

Section 2. **Definitions.** As used in [this act], unless the context otherwise requires, the following definitions apply:

(1) "Bypassing" means any act, using any means, the purpose of which is to obtain utility service without having such service pass through the authorized meter provided for measuring or registering such service.

(2) "Person" means an individual, firm, partnership, corporation, unincorporated association, or other legal or business entity or the executor, administrator, trustee, receiver, assignee, or personal representative thereof.

(3) "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the operation or function of any authorized metering device provided for measuring or registering utility service.

(4) "Utility" means any public utility, municipally owned utility, or cooperative utility that provides electricity, gas, water, sewage disposal, or combination thereof, for sale to consumers.

(5) "Utility service" means the provision of electricity, gas, water, or sewer service.

Section 3. **Liability for bypass or tampering.** (1) A person who bypasses or tampers, either for his own benefit or the benefit of another, is liable to the affected utility as provided in [section 4] for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of such services is being affected by bypassing or tampering, is liable to the affected utility as provided in [section 4] for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection.

Section 4. **Action for recovery of reasonable value — penalty.** A utility may institute a civil action against a person described in [section 3] to recover the reasonable value of the services actually provided to the person. Upon a finding that such person is liable to the utility, the court

may enter judgment against the person for up to three times the reasonable value of the utility's services actually provided and may award to the prevailing party its costs, including reasonable attorney fees, incurred in the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary.

Approved May 6, 1985.

CHAPTER NO. 679

[HB 438]

AN ACT TO PROVIDE FOR THE OFFSETTING OF CHILD SUPPORT DEBTS AGAINST STATE INCOME TAX REFUNDS; AMENDING SECTION 17-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the department, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing. The department may contract with commercial collection agencies for recovery of debts owed the state by debtors residing outside the boundaries of the state.

(2) In his discretion it is the duty of the state auditor to offset any amount due a state agency from a person or entity against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine.

(3) If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

(4) The department may establish and maintain a procedure to offset against a debtor's income tax refund any debt which is assigned to the state pursuant to 53-2-613 or which the department is attempting to collect on behalf of an individual who has applied for service under 40-5-203. Such

debt must have accrued through written contract, court judgment, or administrative order and be in the form of a liquidated sum due and owing for the support of a minor child."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** Section 2 and this section are effective on passage and approval except that rules adopted under section 2 may not be made effective prior to October 1, 1985.

Approved May 6, 1985.

CHAPTER NO. 680

[SB 25]

AN ACT AUTHORIZING THE STATE TO ASSUME FUNDING FOR CERTAIN DISTRICT COURT EXPENSES AND AUTHORIZING THE LEGISLATURE TO PROVIDE FUNDING FOR THE DISTRICT COURT GRANT PROGRAM; AMENDING SECTIONS 3-5-602, 3-5-604, 7-6-2352, 7-6-2426, 7-6-2427, 46-8-114, 46-8-201, 46-8-202, 46-11-319, 46-14-202, 46-14-221, 46-15-104, AND 46-18-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State assumption of certain district court expenses.** (1) Effective July 1, 1985, the state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; and

(f) psychiatric examinations.

(2) The supreme court administrator, under the direction of the supreme court and in consultation with the district judges for each judicial district, shall include within the supreme court's biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) If money appropriated for the expenses listed in subsection (1) is insufficient to fully fund those expenses, the county is responsible for payment of the balance. If no money is appropriated, the county is responsible for payment of all expenses.

Section 2. **Fiscal administration for payment of court expenses.** The supreme court administrator shall:

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(1) establish procedures for disbursement of funds for payment of district court expenses listed in [section 1], including prorating of those funds if they are insufficient to cover all expenses listed in [section 1];

(2) in consultation with the department of commerce, develop a uniform accounting system for use by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes; and

(3) provide for annual auditing of district court expenses to assure normal operations and consistency in reporting of expenditures.

Section 3. **Reimbursement for juror and witness fees.** According to procedures established by the supreme court administrator under [section 2(1)], each clerk of district court shall submit to the supreme court administrator a detailed statement containing a list of witnesses and jurors for criminal cases only and the amount of per diem and mileage paid to each by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for the cost of witness and juror fees on a full or prorated basis in accordance with [section 2]. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

Section 4. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive a base annual salary of not less than $16,000 or more than $23,000 and no other compensation except as provided in 3-5-604. The salary shall be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed *and out of an appropriation made to the supreme court as provided in subsection (2).*

(2) The supreme court administrator shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion *of the remainder* of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge *or judges* of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his *or their* district on the basis prescribed in this subsection. The *portion of the* salary *payable by a county* is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the

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time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Transcript of proceedings. (1) Each reporter must furnish, upon request, with all reasonable diligence, to a party or his attorney in a case in which he has attended the trial or hearing a transcript from his stenographic notes of the testimony and proceedings of the trial or hearing or a part thereof, upon payment by the person requiring the same of $2 per page for the original transcript, 50 cents per page for the first copy, 25 cents per page for each additional copy.

(2) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate *for* the sum to which he is entitled. *The reporter shall submit the certificate to the supreme court administrator who, in accordance with [section 2], is responsible for the prompt payment of all or a portion of the amount due the reporter. If the supreme court administrator, in accordance with [section 2], pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a statement from the reporter.*

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a transcript, it shall be furnished to him and paid for by the *state in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required in [section 1].*"

Section 6. Section 7-6-2352, MCA, is amended to read:

"7-6-2352. State grants to district courts — rules. (1) The department of commerce shall make grants, *to the extent funds are appropriated for that purpose,* to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the department of commerce for a grant by filing a written request on forms provided by the department by July 20 for the previous fiscal year unless the department grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) *To the extent funds are available, the* department of commerce shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

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(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The department of commerce shall notify each eligible county as soon as possible of its intention to award a grant to that county and the amount of the award.

(6) The grant received by the county shall be placed in the district court fund.

(7) After all grants are awarded, the department of commerce shall audit each approved grant request. The department shall charge each county receiving a grant an audit fee in the same amount as the costs incurred in conducting the audit.

(8) If the audit of a grant recipient discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the department of commerce. The department shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. No county is eligible for a district court grant if it owes the department a refund of a prior year's overpayment.

(9) The department of commerce shall prescribe rules and forms necessary to effectively administer this section. The department may require a county to provide any information considered necessary for the administration of the program."

Section 7. Section 7-6-2426, MCA, is amended to read:

"7-6-2426. Enumeration of county charges. The following are county charges:

(1) charges incurred against the county by virtue of any provision of this title;

(2) one-half of the salary of the county attorney and all expenses necessarily incurred by him in criminal cases arising within the county;

(3) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(4) the board of prisoners confined in jail;

(5) the accounts of the coroner of the county for such services as are provided by law;

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(6) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(7) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(8) the contingent expenses necessarily incurred for the use and benefit of the county;

(9) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge."

Section 8. Section 7-6-2427, MCA, is amended to read:

"7-6-2427. Special provisions for certain charges related to criminal prosecutions. (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions.

(2) *If* a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed, *subject to partial or total reimbursement as provided in [section 1]*."

Section 9. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county, *city, town,* or state agency responsible for the expenses of court-appointed counsel as provided for in 46-8-201."

Section 10. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable *as provided in [section 1]* to the county in which the proceeding arose, *the office of supreme court administrator, or both,* except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

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(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest."

Section 11. Section 46-8-202, MCA, is amended to read:

"46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at *state* expense *payable according to procedures established under [section 2(1)] and, to the extent those costs are not paid by the state, at county expense in accordance with [section 1(3)] and [section 2(1)]*."

Section 12. Section 46-11-319, MCA, is amended to read:

"46-11-319. Expenses of grand jury. *(1)* All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

(2) Subject to the procedures established under [section 2(1)], the state shall reimburse the county for juror and witness fees as provided in [section 3] and for witness expenses as provided in 46-15-104. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund."

Section 13. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(4) The cost of the examination must be paid by the county or the state, or both, according to procedures established under [section 2(1)]."

Section 14. Section 46-14-221, MCA, is amended to read:

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"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the proceeding against him shall be dismissed, except as provided in subsection (4) of this section, and the county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as provided in 53-20-102(4), the proceeding against him shall be dismissed and the county attorney shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state *and payable according to procedures established under [section 2(1)]*."

Section 15. Section 46-15-104, MCA, is amended to read:

"46-15-104. Expenses of witness. *(1)* When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

(2) According to procedures established by the supreme court administrator under [section 2(1)], the clerk of district court shall submit to the supreme court administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each by the county. Upon

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receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the cost of witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund."

Section 16. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in [section 1], the money collected from assessment of these costs must be paid to the supreme court administrator for deposit into the state general fund to the extent the expenses were paid by the state; and

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose."

Section 17. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 3, chapter 5, and the provisions of Title 3, chapter 5, apply to sections 1 through 3.

Section 18. **Coordination instruction.** If Senate Bill No. 142 is not passed and approved or if Senate Bill No. 142, as passed and approved, contains no funding or appropriation for district court expenses and grants, this act is void.

Section 19. **Effective date.** This act is effective July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 681

[SB 33]

AN ACT PROVIDING FOR ESTABLISHMENT OF AGRICULTURAL LAND AND TIMBERLAND VALUES FOR THE REVALUATION CYCLE BEGINNING JANUARY 1, 1986; CREATING CLASS THIRTEEN PROPERTY FOR TIMBERLANDS; REMOVING TIMBERLANDS FROM CLASS THREE PROPERTY; CONTINUING THE EXEMPTION FROM THE PROVISIONS OF THE REALTY TRANSFER ACT FOR TIMBERLANDS; AMENDING SECTIONS 15-6-101, 15-7-201, 15-7-202, 15-7-307, AND 15-8-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

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WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"15-7-201. (Effective January 1, 1986) Legislative intent — value of agricultural property. (1) Since the market value of many agricultural properties is based upon speculative purchases which do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use. *Except as provided in subsections (3) and (4), within* each class *of agricultural land, such* land shall be assessed at a value that is fairly based on its ability to produce.

(3) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values.

(4) For the revaluation beginning January 1, 1986, the department of revenue shall continue to use the agricultural land valuation schedules in effect on January 12, 1984, except that irrigated land values shall be revised, taking noncapital water distribution costs into consideration. However, at no time may the value of irrigated land be below the value such land would have if it were not irrigated."

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Section 2. **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class thirteen property is taxed at the percentage rate "P" of the combined appraised value of the standing timber and grazing productivity of the property.

(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.

(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.

(b) B shall be rounded downward to the nearest 0.0001%.

(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111.

Section 3. Section 15-6-101, MCA, is amended to read:

"15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with *this part.*"

Section 4. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year it meets any of the following qualifications:

(a) the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

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(ii) it is used for grazing; or

(iii) it is in a cropland retirement program; or

(b) it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership; or

(c) it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(4) For the purposes of this part, growing timber is not an agricultural use."

Section 5. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate imposed by this part shall not apply to:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(5) an instrument which (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between husband and wife or parent and child with only nominal actual consideration therefor;

(12) an instrument the effect of which is to transfer the property to the same party or parties;

(13) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

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(14) a transfer made in contemplation of death."

Section 6. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in classes four through eleven is the percentage of market value established for each class of property in 15-6-134 through 15-6-141.

(5) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in [section 2], under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

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(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in 15-6-131 and classes two, three, *and thirteen* is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, *and [section 2]* for each class of property."

Section 7. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15 apply to section 2.

Section 9. **Coordination instruction.** In the event that House Bill No. 240, including those sections separating agricultural land and timberland, or any other similar bill passes which separates agricultural land and timberland into separate classes, the provisions of this act as they apply to timberland shall be void. In the event that Senate Bill No. 431 passes, the definition of timberland in section 2 must be consistent with the definition embodied in Senate Bill No. 431.

Section 10. **Effective date — termination date.** This act is effective January 1, 1986, and, except for section 3, terminates January 1, 1991.

Approved May 9, 1985.

CHAPTER NO. 682

[SB 72]

AN ACT TO EXCLUDE CERTAIN SOCIAL SECURITY BENEFITS, CERTAIN TIER 1 RAILROAD RETIREMENT BENEFITS, WORKERS' COMPENSATION BENEFITS, AND CERTAIN EMPLOYER-PAID HEALTH INSURANCE PREMIUMS FROM ADJUSTED GROSS INCOME IN COMPUTING STATE INDIVIDUAL INCOME TAX LIABILITY BY PROVIDING A BASE EXCLUSION FOR MARRIED PERSONS FILING SEPARATELY; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

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(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(m) all benefits received under the workers' compensation laws; and

(n) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted

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gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

Approved May 9, 1985.

CHAPTER NO. 683

[SB 129]

AN ACT TO ESTABLISH A CENTRALIZED FILING SYSTEM FOR SECURITY INTERESTS COVERING AGRICULTURAL PRODUCTS; PROVIDING FOR COMPUTER DATA TO BE SEARCHABLE BY PRIVATE COMPUTERS; AMENDING SECTIONS 2-6-109, 30-9-401, 30-9-403, AND 30-9-407, MCA; AND PROVIDING EFFECTIVE DATES AND AN IMPLEMENTATION SCHEDULE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-401, MCA, is amended to read:

"30-9-401. Place of filing — erroneous filing — removal of collateral. (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

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(a) when the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business."

Section 2. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer — computerized farm statement system. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in *subsections* (6) *and (10)*, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured

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party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) *Except as provided in subsection (8), the* uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be the following amounts for:

(a) an original financing or continuation statement in standard form — $2;

(b) a termination statement in standard form — $2;

(c) a financing statement indicating an assignment in standard form — $2;

(d) a statement of release of collateral in standard form — $2;

(e) a certificate from the filing officer showing that an effective financing statement is on file, requested in the standard form — $3;

(f) any of the documents in (a) through (e) other than in standard form — an additional $2;

(g) each name more than one required to be indexed — $2;

(h) a uniform indexing fee of $2 for showing a trade name for any person; and

(i) any of the filing and indexing in subsections (a), (b), or (d) where the collateral is equipment or rolling stock of railroads or street railways — $15.

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(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9). The secretary of state shall deposit all fees he collects in the state treasury and the fee money is allocated to the secretary of state to pay the expenses of establishing and operating the computerized access system.

(9) Within one working day of receipt of a financing or continuation statement described in subsection (8), the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish and he shall mail a certified copy of the financing or continuation statement, with the filing fee provided in subsection (5), to the clerk and recorder of the debtor's county. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest in the collateral described in subsection (8) is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents as provided in [section 5].

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists."

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Section 3. Section 30-9-407, MCA, is amended to read:

"30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. The uniform fee for such a certificate shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged."

Section 4. **Rules for agricultural lien filing — duties — perfection and priority rights.** (1) The secretary of state shall adopt rules establishing fees for filing a financing statement pursuant to 30-9-403(8) and for the cost of a printout pursuant to 30-9-407. The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed as provided in [section 5].

Section 5. **Implementation schedule — refiling of existing financing statements.** (1) A financing or continuation statement covering property described in 30-9-403(8) filed after June 30, 1985, must be filed in the office of the secretary of state.

(2) A financing or continuation statement that covers property described in 30-9-403(8) and is filed and of record with a county clerk and recorder lapses as provided in 30-9-403(10).

(3) The refiling of a financing or continuation statement in the office of the secretary of state that covers property described in 30-9-403(8) is accomplished by:

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(a) presenting a certified copy of the statement as filed and of record with the county clerk and recorder together with certified copies of all related documents, including all continuances, releases, assignments, or amendments;

(b) filing with the county clerk and recorder a notice that the statement and related documents have been filed in the office of the secretary of state; and

(c) tendering the filing fee.

(4) The secretary of state shall by administrative rule establish fees for filing and indexing documents as required by this section. The fees must be commensurate with the costs of processing the documents and establishing the computerized access system described in 39-9-403(9). The secretary of state shall deposit all fees he collects in the state treasury and the fee money is allocated to the secretary of state to pay the expenses of establishing and operating the computerized access system.

Section 6. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — penalty. (1) Except as provided in subsections (3), (4), (5), and (6), in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) *Except as provided in 30-9-403, this* section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, or to lists of the names of employees governed by Title 39, chapter 31.

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

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Section 7. **Construction.** Nothing contained in 30-9-403 may be construed to limit the authority of the department of livestock to accept and file notices of security agreements covering branded livestock. All liens on any livestock bearing a recorded brand must be filed with the department of livestock as provided for in 81-8-301.

Section 8. **Codification instruction.** Sections 4 and 7 are intended to be codified as an integral part of Title 30, chapter 9, and the provisions of Title 30, chapter 9, apply to sections 4 and 7.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective dates.** (1) Sections 1 through 4, 6, and 7 are effective July 1, 1986.

(2) Sections 5 and 8 through 10 are effective on passage and approval.

Approved May 9, 1985.

CHAPTER NO. 684

[SB 110]

AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO CERTAIN AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 21] may be cited as the "Uniform Arbitration Act".

Section 2. **Uniformity of interpretation.** [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

Section 3. **Application to labor agreements.** Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [sections 1 through 21] if the agreement so specifies, except [section 15(1), (3), (4), and (5) and section 16] apply in every case.

Section 4. **Validity of arbitration agreement — exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

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(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;

(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and

(d) claims for workers' compensation.

(3) Notice that a contract is subject to arbitration pursuant to [this act] shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

Section 5. **Proceedings to compel or stay arbitration.** (1) On the application of a party showing an agreement described in [section 4] and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to [section 20], the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

Section 6. **Appointment of arbitrators.** If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason

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cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Section 7. **Majority action by arbitrators.** The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

Section 8. **Hearing.** Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

Section 9. **Representation by attorney.** A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver of this right prior to the proceeding or hearing is ineffective.

Section 10. **Witnesses, subpoenas, and depositions.** (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].

(4) Fees for attendance as a witness are the same as for a witness in the district court.

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Section 11. **Award.** (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

Section 12. **Change of award by arbitrators.** On the application of a party or, if an application to the court is pending under [section 14, 15, or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in [subsections (1)(a) and (1)(c) of section 16] or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of [sections 14, 15, and 16].

Section 13. **Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

Section 14. **Confirmation of award by court.** Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

Section 15. **Vacating an award.** (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

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(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Section 16. **Modification or correction of award by court.** (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Section 17. **Judgment on award — costs.** (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

Section 18. **Applications to court — how made.** Except as otherwise provided, an application to the court under [sections 1 through 21] must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

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Section 19. **Jurisdiction of district court.** The making of an agreement described in [section 4] providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 21] and to enter judgment on an award under the agreement.

Section 20. **Venue.** An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

Section 21. **Appeals.** (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under [section 5];

(b) an order granting an application to stay arbitration made under [section 5(2)];

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of [sections 1 through 21].

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in *[sections 1 through 21] as if an agreement described in [section 4] is in effect*, unless there is a collective bargaining agreement *to the contrary* applicable."

Section 23. Section 27-1-412, MCA, is amended to read:

"27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

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(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 24. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. *This section does not affect the validity of an agreement enforceable under [sections 1 through 21].*"

Section 25. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien — amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of *[sections 1 through 21]*."

Section 26. **Application not retroactive.** This act applies only to agreements made subsequent to October 1, 1985.

Section 27. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. **Repealer.** Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.

Approved May 9, 1985.

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CHAPTER NO. 685

[SB 142]

AN ACT INCREASING THE FEE IN LIEU OF TAX ON AUTOMOBILES AND LIGHT TRUCKS INCLUDED IN THE FLAT FEE SYSTEM; PROVIDING THAT THE INCREASED REVENUE BE USED, CONTINGENT ON PASSAGE AND APPROVAL OF SENATE BILL NO. 25, TO FUND CRIMINAL EXPENSES OF DISTRICT COURTS; AMENDING SECTIONS 61-3-509 AND 61-3-533, MCA; AND PROVIDING AN APPLICABILITY DATE, AN EFFECTIVE DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes and fees in lieu of tax. *(1) Except as provided in subsection (2), the* county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motor homes and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall credit the fee for district courts from each light vehicle license fee to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund [to be used for purposes of state funding of the district court expenses enumerated in [section 1] of SB 25]."

Section 2. Section 61-3-533, MCA, is amended to read:

"61-3-533. Schedule of fees for automobiles and light trucks. (1) Except as provided in subsection *(2)*, the following schedule, based on vehicle age and weight, is used to determine the fee imposed by 61-3-532:

Vehicle Age	Weight	
	2,850 pounds or less	More than 2,850 pounds
Less than or equal to 4 years	*$77*	*$97*
More than 4 years and less than 8 years	*45*	*55*
8 years old and over	*12.50*	*17.50*

(2) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is *$8.*"

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Section 3. **Coordination instruction.** The bracketed language in subsection (2) of section 1 is effective only if this act and Senate Bill No. 25 are both passed and approved, including section 1 of Senate Bill No. 25, which lists the district court expenses to be assumed by the state.

Section 4. **Effective date — applicability date — termination date.** (1) This act is effective July 1, 1985, and applies to light vehicles registered on or after July 1, 1985.

(2) This act terminates July 1, 1987.

Approved May 9, 1985.

CHAPTER NO. 686

[SB 182]

AN ACT TRANSFERRING AUTHORITY FOR SETTING MOTOR CARRIER AND MOTOR VEHICLE SAFETY STANDARDS FROM THE PUBLIC SERVICE COMMISSION TO THE MOTOR VEHICLE DIVISION AND GIVING THE HIGHWAY PATROL PRIMARY AUTHORITY FOR ENFORCEMENT OF SAFETY STANDARDS; AMENDING SECTIONS 44-1-1005, 61-10-141, 69-12-201, AND 69-12-203, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-201, MCA, is amended to read:

"69-12-201. Supervision and regulation of motor carriers. (1) The commission is hereby vested with power and authority and it is hereby made its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, *and* affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.

(2) The commission shall have power and authority by general order or otherwise to prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission also may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when the same are required for the best interests of public transportation."

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Section 2. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this chapter, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of this chapter, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of such vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."

Section 3. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards. (1) A peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by 61-10-101 through 61-10-110, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of such joint enforcement, the highway patrol is designated as the lead

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agency. The highway patrol and the department shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department. Each employee so designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of such vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203."

Section 4. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Motor carriers safety — enforcement. *(1) The division shall:*

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the division.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

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(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to *subsection (1)(a)*. Inspection of a vehicle based in Montana may, *at the request of the carrier*, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to *subsection (1)(a)* is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section *prohibits* the inspection of a motor vehicle as defined by *subsection (1)(a)* at a safe location on a public road.

(4) The division shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Section 5. **Initial adoption of standards.** The division shall initiate proceedings before July 1, 1985, to adopt standards for safety of operations of motor carriers and motor vehicles pursuant to 44-1-1005(1). The standards may include those previously adopted by the public service commission, but the division may modify or expand the standards as necessary to conform to 44-1-1005(1) and other applicable sections. The division shall make the standards pursuant to 44-1-1005(1) effective on July 1, 1985.

Section 6. **Effective date.** This section and section 5 are effective on passage and approval. The remaining provisions of this act are effective July 1, 1985.

Section 7. **Transfer of personnel.** It is the intention of the legislature that, for the continuity of an ongoing truck safety program, persons employed by the public service commission solely for truck safety under the motor carrier safety assistance program on January 1, 1985, must be employed by the department of justice, division of motor vehicles, in the performance of duties similar to those they performed before January 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 687

[SB 236]

AN ACT PROVIDING THAT A RENEWED STATE LEASE MAY BE CANCELED FOR VIOLATIONS BY THE SAME LESSEE DURING THE PRIOR LEASE TERM; AMENDING SECTION 77-6-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-205, MCA, is amended to read:

"77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot who has paid all rentals due from him to the state is entitled to have his lease renewed for a 5- or 10-year period at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the

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renewal imposed by law as terms of the lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease."

Section 2. **Extension of authority.** Any existing authority of the board or department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 9, 1985.

CHAPTER NO. 688

[SB 250]

AN ACT CREATING A REAL ESTATE RECOVERY ACCOUNT FOR PAYMENT OF UNSATISFIED JUDGMENTS AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT; COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA; REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

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(1) "Account" means the real estate recovery account established in [section 3].

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

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Section 2. Section 37-51-311, MCA, is amended to read:

"**37-51-311. Fees — deposit of fees.** (1) The fees prescribed by the board shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not *pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status.*"

Section 3. **Real estate recovery account established — minimum balance — interest.** (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. [The real estate recovery account is statutorily appropriated as provided in [section 2 of HB 12].]

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

Section 4. **Initial licensure and additional assessment.** (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

Section 5. **Claims against fund — orders for payment.** (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and [section 6], with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

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(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

Section 6. **Form of application.** The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of [section 5], stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

Section 7. **Motion to dismiss application.** The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under [sections 5 and 6]. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

Section 8. **Hearing on application.** (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

Section 9. **Payment from account.** If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of [sections 3 through 14].

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Section 10. **Limitation of payment — pro rata distribution.** (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

Section 11. **Claims satisfied in order of filing.** If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to [section 5]. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

Section 12. **Deposits by board.** Money received by the board under [section 13] must be deposited in the account and allocated exclusively for the purposes provided in [sections 3 through 14].

Section 13. **Subrogation rights of board.** Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

Section 14. **Other disciplinary powers unimpaired — effect of repayment to fund.** Nothing contained in [sections 3 through 14] limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

Section 15. **Repealer.** Section 37-51-304, MCA, is repealed.

Section 16. **Initial transfer of funds — assessment of all licensees — retransfer.** (1) The amount of $100,000 is transferred from the

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state special revenue fund to the real estate recovery account for the use of the board.

(2) Notwithstanding the provisions of 37-51-311, the board shall charge a fee of $35 in addition to any other fee due under the provisions of Title 37, chapter 51, to all licensees paying a renewal fee for the 1986 calendar year.

(3) Notwithstanding the provisions of [section 3], $100,000 is transferred from the real estate recovery account on March 1, 1986, or when the total balance of the account exceeds $200,000, whichever occurs last, to the state special revenue fund for the use of the board.

Section 17. **Codification instruction.** Sections 3 through 14 are intended to be codified as an integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to sections 3 through 14.

Section 18. **Extension of authority.** Any existing authority of the board of realty regulation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 19. **Coordination instruction.** If this act and HB 12 are both passed and approved, a citation to section 3 of this act is added to the list of statutory citations in section 2 of HB 12. If HB 12 is not passed and approved, the bracketed language in section 3 of this act is void.

Section 20. **Effective date.** This act is effective July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 689

[SB 268]

AN ACT REVISING THE CRITERIA FOR DETENTION OF YOUTHS; PROVIDING THAT A DETAINED YOUTH MUST HAVE ALLEGEDLY COMMITTED AN ACT WHICH IF COMMITTED BY AN ADULT WOULD CONSTITUTE A CRIME; AMENDING SECTION 41-5-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-305, MCA, is amended to read:

"41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained *in a jail or other facility for detention purposes unless he has allegedly committed an act which if committed by an adult would constitute a criminal offense, and:*

(a) the alleged act is one of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

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(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) sexual intercourse without consent as defined in 45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as included in 45-9-101;

(x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);

(b) he has escaped from a correctional facility;

(c) he has violated a valid court order or an aftercare agreement; or

(d) he meets the criteria for detention established by the youth court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Approved May 9, 1985.

CHAPTER NO. 690

[SB 288]

AN ACT REMOVING THE REQUIREMENT THAT THE STATE MARKUP ON LIQUOR MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED, OR PROCESSED IN MONTANA BE 10 PERCENT LESS THAN THE MARKUP ON THE PRODUCTS OF OUT-OF-STATE MANUFACTURERS, DISTILLERS, RECTIFIERS, AND PROCESSORS; PROVIDING A LOWER LIQUOR EXCISE AND LICENSE TAX FOR COMPANIES THAT MANUFACTURE, DISTILL, RECTIFY, BOTTLE, OR PROCESS, AND SELL NOT MORE THAN 200,000 PROOF GALLONS OF LIQUOR ANNUALLY; AMENDING SECTIONS 16-1-401 AND 16-1-404, MCA; REPEALING SECTION 16-2-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Montana Legislature recognizes the need to foster small business growth and development as an essential component of the Montana economy; and

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WHEREAS, the Montana Legislature finds that small, emerging companies engaged in the business of manufacturing, distilling, rectifying, bottling, and processing liquor are particularly vulnerable to variables in the marketplace in comparison to larger well-established companies; and

WHEREAS, tax reductions to such smaller, emerging companies are a means of fostering their economic growth without impinging upon interstate commerce.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-401, MCA, is amended to read:

"16-1-401. Liquor excise tax. *(1)* The department is hereby authorized and directed to charge, receive, and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered *in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;*

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums collected and received not later than the 10th day of each and every month."

Section 2. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department is hereby authorized and directed to charge, receive, and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered *in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;*

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax shall be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price shall

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be computed by adding to the cost of said liquor the state markup as designated by the department. *The* license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department shall retain in a separate account the amount of *the* license tax so received. Thirty percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection *(3)*. Four and one-half percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues shall be deposited in the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. The department shall pay quarterly to each county treasurer the proportion of the license tax due each county to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection *(2)* for use by cities and towns shall be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns shall be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of institutions for the treatment, rehabilitation, and prevention of alcoholism shall be credited quarterly to the department of institutions. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder shall be distributed as provided in 53-24-206."

Section 3. **Repealer.** Section 16-2-202, MCA, is repealed.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 691

[SB 289]

AN ACT TO PROVIDE THAT ANY PROPOSED ADMINISTRATIVE RULE DEVELOPED BY THE BOARD OF PUBLIC EDUCATION THAT IMPOSES A SUBSTANTIAL FINANCIAL IMPACT ON A SCHOOL DISTRICT IS NOT EFFECTIVE UNTIL THE LEGISLATURE PROVIDES A MEANS OF FINANCING THE RULE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Rules with substantial financial impact — fiscal note — effect without funding.** (1) When developing rules, policies, and standards under 20-2-121(6), (7), (9), and (11), the board of public education

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shall concurrently develop a fiscal note to determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a suggested fiscal note for submission to the board. The board may also accept other testimony and exhibits on the financial impact to school districts before completing a final fiscal note.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not proceed to rulemaking and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the foundation program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may proceed to rulemaking.

Approved May 9, 1985.

CHAPTER NO. 692

[SB 321]

AN ACT TO REVISE THE LAWS RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING BAIL; TO EXPAND THE LIST OF BAIL CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-101, 46-9-103, 46-9-301, AND 46-9-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-101, MCA, is amended to read:

"46-9-101. Definition and purpose. "Bail" is the security given for the *primary* purpose of insuring the presence of the defendant in a pending criminal proceeding."

Section 2. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail pending sentence or appeal. (1) *(a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail.*

(b) A person found guilty of an offense and awaiting imposition or execution of sentence or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may be admitted to bail only if the judge finds that the person is not likely to flee and does not pose a danger to the safety of any other person or the community.

(2) A *person found guilty* of the offense of deliberate homicide is presumed to *pose* a danger to *the safety of the community*, which presumption is rebuttable."

Section 3. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties; and

(10) considerate of the defendant's employment status."

Section 4. Section 46-9-501, MCA, is amended to read:

"46-9-501. Form of conditions of bail. (1) If a person is admitted to bail, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and

(b) any other conditions that the court may reasonably prescribe to assure his appearance *as* required *and to protect any person from bodily injury, including but not limited to a condition that the person admitted to bail:*

(i) remain in the custody of a designated person who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required;

(ii) maintain employment or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on travel;

(v) avoid all contact with an alleged victim of the crime or limit contact with a potential witness who may testify concerning the offense, except that contact which is necessary to the preparation of the defense;

(vi) report on a regular basis to a designated law enforcement agency or other pretrial services agency;

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(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from the use of alcohol or a dangerous drug without a prescription from a licensed medical practitioner;

(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.

(2) The judge may at any time amend his order to impose additional or different conditions of release.

(3) If the defendant is admitted to bail after conviction, the conditions of bail, *in addition to those set forth in subsection (1),* shall be that:

(a) he will duly prosecute his appeal; and

(b) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed."

Approved May 9, 1985.

CHAPTER NO. 693

[SB 370]

AN ACT ESTABLISHING COMPENSATION FOR ELECTED STATE OFFICIALS, MEMBERS OF THE JUDICIARY, LEGISLATORS, THE COMMISSIONER OF POLITICAL PRACTICES, AND MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 2-16-405, 3-5-211, 5-2-301, 13-37-106, AND 15-2-102, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year *1986* and following years are:

Governor	*$50,452*
Lieutenant governor	*$36,141*
Chief justice of the supreme court	*$51,722*
Justices of the supreme court, each	*$50,452*
Attorney general	*$46,016*
State auditor	*$33,342*
Superintendent of public instruction	*$39,672*
Public service commission chairman	*$37,363*
Public service commissioners, other than chairman	*$36,141*

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Secretary of state	*$33,342*
Clerk of the supreme court	*$32,401*"

Section 2. Section 3-5-211, MCA, is amended to read:

"**3-5-211. Salaries and expenses of district judges.** (1) The annual salary of each district judge is *$49,178.*

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 3. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade *10*, step 2, classified state employee for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to *$50* a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(5) In addition to the mileage allowance provided for in subsection *(4)*, legislators are entitled to two additional round trips to their place of residence during each regular session upon submittal of an appropriate claim for such mileage reimbursement to the office of legislative council.

(6) Legislators are not entitled to any additional mileage allowance under subsection *(4)*(a) or *(4)*(b) for a special session if it is convened within 7 days of a regular session."

Section 4. Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** (1) The commissioner of political practices is entitled to receive a salary of *$27,655 a year.*

(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature."

Section 5. Section 15-2-102, MCA, is amended to read:

"**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of

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the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of *$28,373 a year.* The remaining state tax appeal board members shall be paid a salary of *$27,635 a year.* All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature."

Section 6. **Effective dates.** (1) Section 3(1) of this act is effective January 1, 1987.

(2) All other sections of this act are effective July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 694

[SB 377]

AN ACT PROVIDING FOR 100 PERCENT RECOVERY OF EQUIPMENT ABOVE GROUND, 200 PERCENT RECOVERY OF OTHER WELL COSTS, AND 100 PERCENT RECOVERY OF OPERATING COSTS ON OIL AND GAS WELLS IN POOLED SPACING UNITS IF AN OWNER OF AN INTEREST IN THE UNIT REFUSES TO JOIN THE UNIT; AMENDING SECTION 82-11-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-202, MCA, is amended to read:

"82-11-202. Pooling of interest within spacing unit. (1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling within the spacing unit, the board, upon the application of an interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. The pooling order shall be made after hearing and shall be upon terms and conditions that

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are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive without unnecessary expense his just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall when produced be considered for all purposes to have been produced from the tract by a well drilled thereon.

(2) *(a)* The pooling order shall provide for the drilling and operating of a well on the spacing unit and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling, and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of and only out of production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof, *and excluding the royalty provided for in subsection (2)(c) of this section.* If a dispute arises as to the cost, the board by order shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production, and thereafter all of the owners in the spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

(b) If an owner refuses to pay his share of the costs of drilling and operating the well, the order must include as cost:

(i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus 100% of the refusing owner's share of the cost of operation of the well commencing with first production and continuing until the agreeing owners have recovered such costs; and

(ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200% of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A refusing owner of an oil and gas interest in a spacing unit which is not subject to any lease or other contract for development of oil and gas is considered to own a landowner royalty equal to one-eighth of his proportionate share of production from the well until such time as the consenting owners recover the costs specified in subsection (2)(b). Any interest in production from the spacing unit to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be owned by the refusing owner. After costs have been recovered by the agreeing

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owners, the refusing owner owns his proportionate share of the well, surface facilities, and production and is liable for further costs as if he had originally agreed to drilling of the well.

(d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand furnish such owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced and the amount of proceeds realized from the sale of production during the preceding month."

Approved May 9, 1985.

CHAPTER NO. 695

[SB 390]

AN ACT DEFINING "NEW PRODUCTION" OF PETROLEUM, OIL, AND NATURAL GAS; PROVIDING FOR A UNIFORM RATE OF TAXATION ON NEW PRODUCTION; ALLOWING CERTAIN DEDUCTIONS IN DETERMINING THE NET PROCEEDS OF NEW PRODUCTION; PROVIDING FOR CONSIDERATION OF NEW PRODUCTION TAXES IN COUNTY BONDING LIMITATIONS; PROVIDING FOR DISPOSITION OF TAXES IN LIEU OF NET PROCEEDS TAXES; PROVIDING FOR QUARTERLY PAYMENT OF NEW PRODUCTION TAXES; REVISING THE DEFINITION OF "TAXABLE VALUATION" AS IT APPLIES TO THE CLASSIFICATION OF COUNTIES; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-16-102, 15-23-601 THROUGH 15-23-603, 15-23-605, 15-23-607, 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, AND 20-10-144, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-601, MCA, is amended to read:

"15-23-601. Definitions. As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any lease that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production.

(3) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

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(4) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 2. Section 15-23-602, MCA, is amended to read:

"15-23-602. Statement of sales proceeds. *(1) Except as provided in subsection (2), each* operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before April 15 in each year make out and deliver to the department of revenue a statement of the gross sales proceeds of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year. The gross sales proceeds shall be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement;

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold;

(e) except for new production as defined in 15-23-601:

(i) actual cost of extracting product from well;

(ii) cost of construction, repairs, and betterments;

(iii) actual cost of fire insurance and workers' compensation insurance;

(iv) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil reported pursuant to subsection *(1)(c)*, including a separate statement of the amount of such taxes paid or withheld from each royalty owner.

(2) Each operator having new production as defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, make out and deliver to the department of revenue a statement of the gross sales proceeds of such new production from each well owned or worked by such person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement shall show the information required in subsections (1)(a) through (1)(d)."

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Section 3. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) *Except as provided in subsection (3), the* department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(e) 70% of the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof.

(3) For new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from such well for the year covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there shall be deducted therefrom so much thereof as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline."

Section 4. Section 15-23-605, MCA, is amended to read:

"15-23-605. Assessment of royalties. *(1)* The amount of royalty received, valued as provided in 15-23-603(1)(a), less 70% of the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8), shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting

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forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

(2) Net proceeds for new production, as defined in 15-23-601, includes royalties received without deduction for excise taxes."

Section 5. Section 15-23-607, MCA, is amended to read:

"15-23-607. County assessors to compute taxes. (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds, except as provided in 15-36-121 *and in subsection (2)*, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

(2) For new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of such new production, but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(3); or

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(3).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, shall be treated as taxable value for county bonding purposes.

(4) The operator or producer shall be liable for the payment of said taxes and same shall, *except as provided in [section 20]*, be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest. After such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 6. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the *total of the* taxable value of the property therein subject to taxation, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%*, as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $150,000 without the approval of a majority of the

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electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414."

Section 7. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the *total of the* taxable value of the property therein, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%*, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed 11.25% but will not exceed 37% of the *total of the* taxable value of such property, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%*, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 8. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the *total of the* taxable value of the property therein, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%*. The taxable property *and the amount of new production taxes levied* shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the *total of the* taxable value of such property, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multipled by 60%*, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed 22.5% of the *total of the* taxable value of the property within the county, *plus the amount of new production taxes levied divided by the appropriate tax rates*

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described in 15-23-607(2)(a) or (2)(b) and multipled by 60%, as ascertained by the last preceding general assessment."

Section 9. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 22.5% of the *total of the* taxable value of the property therein, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%,* and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 10. Section 7-16-2327, MCA, is amended to read:

"7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, shall have the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 13% of the *total of the* taxable value of the taxable property in the county, *plus the amount of new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%,* ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(b) No money may be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof."

Section 11. **Disposition of taxes in lieu of net proceeds taxes.** The county treasurer shall credit all taxes on new oil or gas production, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year.

Section 12. Section 20-9-141, MCA, is amended to read:

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"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303, the district's permissive levy amount as provided in 20-9-352, and any additional levies authorized by the electors of the district under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated state impact aid received under the provisions of 20-9-304;

(v) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(vi) anticipated net proceeds taxes for new production, as defined in 15-23-601;

(vii) anticipated interest to be earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(viii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total levy requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 13. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It

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shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section;

(e) any federal or state money, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section; *and*

(f) net proceeds taxes for new production, as defined in 15-23-601."

Section 14. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable

value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section;

(b) any federal or state moneys, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section; *and*

(c) net proceeds taxes for new production, as defined in 15-23-601."

Section 15. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the

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district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of 20-9-351 and subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, *and plus net proceeds taxes for new production, as defined in 15-23-601,* is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of 20-9-351 and subsection (3) of this section. The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account [program] for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium.

(3) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 16. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in

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accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(ii) net proceeds taxes for new production, as defined in 15-23-601; and

(iii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special educational cooperative agreement levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such

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county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special educational cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 17. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget. Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions

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of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536; plus

(f) net proceeds taxes for new production, as defined in 15-23-601; plus

(g) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

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(h) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142."

Section 18. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

(a) first class—all counties having such a taxable valuation of $50 million or over;

(b) second class—all counties having such a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having such a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having such a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having such a taxable valuation of more than $10 million and less than $15 million;

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(f) sixth class—all counties having such a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having such a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less; *and*

(b) the amount of new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%."

Section 19. Section 15-16-102, MCA, is amended to read:

"**15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 *and assessments made on new production as provided in Title 15, chapter 23, part 6, and payable under [section 20]*, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty."

Section 20. **Payment of new production taxes.** (1) Taxes levied and assessed on new production under the provisions of Title 15, chapter 23, part 6, must be paid to the county treasurer in quarterly installments. The payments must be made on or before 5 p.m. on the last day of the months of November, February, May, and August.

(2) Unless one-quarter of such taxes are paid on or before 5 p.m. on the last day of the months of November, February, May, and August of each year, any amount so payable is delinquent.

(3) All such delinquent taxes must draw interest at the rate payable on delinquencies under 15-23-115.

(4) There must also be added to the delinquent taxes a penalty at the same rate as provided for delinquencies under 15-23-104.

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Section 21. **Codification instruction.** Section 11 is intended to be codified as an integral part of Title 15, chapter 23, part 6, and the provisions of Title 15, chapter 23, part 6, apply to section 11. Section 20 is intended to be codified as an integral part of Title 15, chapter 16, part 1, and the provisions of Title 15, chapter 16, part 1, apply to section 20.

Section 22. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 23. **Effective dates.** Sections 1 through 21 of this act are effective July 1, 1985. Sections 22 and 23 are effective on passage and approval, except that rules adopted under section 22 may not be made effective prior to July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 696

[SB 392]

AN ACT TO AUTHORIZE IMPOSITION OF THE DEATH PENALTY OR LIFE IMPRISONMENT FOR PERSONS INCARCERATED IN THE STATE PRISON WHO COMMIT CERTAIN ENUMERATED CRIMES WHILE INCARCERATED AND HAVE BEEN PREVIOUSLY DETERMINED TO BE PERSISTENT FELONY OFFENDERS OR HAVE BEEN PREVIOUSLY CONVICTED OF DELIBERATE HOMICIDE; AMENDING SECTION 46-18-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Additional sentences for offenses committed in state prison — death penalty.** A person serving a sentence of imprisonment in the state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

Section 2. Section 46-18-303, MCA, is amended to read:

"46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

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(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to Title 46, chapter 18, part 5, and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years."

Approved May 9, 1985.

CHAPTER NO. 697

[SB 400]

AN ACT LIMITING THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL BY REQUIRING THAT MONTANA-PRODUCED ALCOHOL BE BLENDED WITH GASOLINE TO PRODUCE GASOHOL; EXTENDING THE ALCOHOL TAX INCENTIVE TO MONTANA-PRODUCED ALCOHOL EXPORTED AND BLENDED WITH GASOLINE; DEFINING THE TERM "EXPORT"; LIMITING AND APPORTIONING THE TOTAL POTENTIAL EXPENDITURE FOR ALCOHOL PRODUCTION TAX INCENTIVE PAYMENTS; AMENDING SECTIONS 15-70-201, 15-70-503, 15-70-522, AND 15-70-523, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"**15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

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(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(e) any person in Montana who blends alcohol with gasoline.

(7) "Export" means export as defined in 15-70-503.

(8) "Gasohol" means all products commonly or commercially known or sold as gasohol, *used* for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products, *including Montana wood or wood products.*

(9) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301(6).

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(10) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(11) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(12) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(13) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

Section 2. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol:

(a) engages in the business of producing alcohol for sale, use, or distribution; or

(b) imports alcohol for sale, use, or distribution.

(2) "Department" means the department of revenue.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 3. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol. (1) *(a) Provided the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, there* is a tax incentive payable to alcohol distributors for distilling alcohol *that:*

(i) was blended with gasoline for sale as gasohol *in Montana; or*

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol.

(b) Payment shall be made by the department of revenue out of the amount collected under 15-70-204.

(2) Except as provided in *subsections* (3) *through (5)*, the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

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(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, *1987*, 30 cents per gallon; and

(d) beginning April 1, 1989, and thereafter, there is no tax incentive.

(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold *in Montana*, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold *in Montana.*

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold *in Montana*, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold *in Montana.*

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold *in Montana*, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold *or that have received the benefit of the tax incentive during those quarters* comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold *in Montana.*

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns *and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations.*

(4) Regardless of the alcohol tax incentive provided in subsection (2) or (3), the total payments made for the incentive under this part may not exceed $2,500,000 in any consecutive 12-month period beginning April 1, 1985.

(5) No alcohol distributor may receive tax incentive payments under subsection (2) that exceed $1,000,000 in any consecutive 12-month period

beginning April 1, 1985, except as follows. If total tax incentive payments to all eligible alcohol distributors in any consecutive 12-month period beginning April 1, 1985, do not reach the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4), an alcohol distributor who has received the maximum payment of $1,000,000 as herein provided may receive additional tax incentive payments subject to the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4)."

Section 4. Section 15-70-523, MCA, is amended to read:

"**15-70-523. Application for payment of tax incentive.** (1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department. *The form must be* accompanied by:

(a) the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold; *and*

(b) a certificate of blending issued by the alcohol purchaser showing the total gallons of alcohol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made."

Section 5. **Extension of authority.** Any existing authority of the department of revenue or the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective dates.** Sections 1 through 4 of this act are effective July 1, 1985. Section 5 and this section are effective on passage and approval, but no rules adopted under section 5 may be made effective before July 1, 1985.

Approved May 9, 1985.

CHAPTER NO. 698

[SB 427]

AN ACT PROVIDING A METHOD FOR FUNDING THE SUPPLEMENTAL ALLOWANCE GRANTED TO CERTAIN MEMBERS OF THE MONTANA FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM IF INSUFFICIENT MONEY IS AVAILABLE; AMENDING SECTION 19-13-1006, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-1006, MCA, is amended to read:

"**19-13-1006. Supplement to certain retirement allowances.** (1) The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse or children a monthly retirement allowance of not less than

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one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. If the city that last employed him as a firefighter no longer employs a full-paid firefighter, the firefighter's or his beneficiary's allowance may not be less than one-half the average regular monthly salary paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement allowance may not exceed $75 per month. Distribution of the money provided for this purpose under 19-11-606(1) shall be made according to subsection (2).

(2) *(a)* At the beginning of each fiscal year the administrator shall request and, *except as provided in subsection (2)(b),* the state auditor shall issue from the state special revenue fund and deliver to the administrator an amount certified to be equal to the total annual dollar difference between the total retirement allowances paid to all retirees or their surviving spouses or children in the previous fiscal year and the total benefits payable on June 30, 1973. The administrator shall deposit this money into the fund.

(b) If insufficient money is contained in the state special revenue fund to pay the amount requested in subsection (2)(a), the auditor shall pay to the administrator the balance contained in the state special revenue fund. The administrator shall continue to request any portion of the amount requested under subsection (2)(a) not paid in previous fiscal years plus sufficient interest to reimburse the fund as defined in 19-13-104, and the auditor shall pay the requests as money in the state special revenue fund becomes available."

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved May 9, 1985.

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CHAPTER NO. 699

[SB 431]

AN ACT REVISING THE GREENBELT APPRAISAL DEFINITION OF AGRICULTURAL LAND FOR REAL PROPERTY TAXATION PURPOSES; ALLOWING FOR THE REDUCED VALUE OF AGRICULTURAL IMPROVEMENTS SITUATED ON AGRICULTURAL LAND BY CLASSIFYING THEM SEPARATELY AND TAXING THEM AT 80 PERCENT OF THE TAXABLE PERCENTAGE APPLICABLE TO CLASS FOUR PROPERTY; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) *Contiguous parcels of land under one ownership that are actively devoted*

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to agricultural use or noncontiguous parcels of land under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year *the parcels meet* any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (1)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(2) Parcels that do not meet the qualifications set out in subsection (1) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(3) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(4) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(5) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111."

Section 2. **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes all improvements on agricultural land, as defined in 15-7-202. Class thirteen property includes 1 acre of real property beneath the agricultural improvements. The 1 acre shall be valued at market value.

(2) Class thirteen property is taxed at 80% of the taxable percentage applicable to class four property.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15 apply to section 2.

Section 5. **Coordination instruction.** In the event neither Senate Bill No. 48 nor House Bill No. 240 nor any other bill that separates timberland from agricultural land in class 3, as described in 15-6-133, is passed and approved, make the following amendment:

Section 1.

Following: subsection (1)(b)

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Insert: "(c) the parcel contains over 15 contiguous acres under one ownership and is capable of producing timber of commercial quality that can be economically harvested in commercial quantity."

Section 6. **Effective date — applicability.** This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1985.

Approved May 9, 1985.

CHAPTER NO. 700

[SB 449]

AN ACT DEFINING "DOMESTIC ABUSE" AND PROVIDING THAT COMMISSION OF DOMESTIC ABUSE IS A CRIMINAL OFFENSE; PRESUMING ARREST IN CASES OF DOMESTIC ABUSE; PROHIBITING A PEACE OFFICER FROM ACCEPTING BAIL ON BEHALF OF A JUSTICE OF THE PEACE WHEN A PERSON IS ARRESTED FOR DOMESTIC ABUSE; AMENDING SECTIONS 46-6-105, 46-6-401, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, recent studies conducted in states that have adopted statutes requiring arrest in cases of domestic abuse show a reduced rate of repeat violence; and

WHEREAS, arrest removes the abuser from the home so the abuse will not continue.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Domestic abuse.** (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of this section and 46-6-401, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000

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or be imprisoned in the state prison for a term not to exceed 5 years, or both.

Section 2. **Written report when no arrest made in domestic violence situation.** When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he shall file a written report with the officer commanding the law enforcement agency employing him, setting forth the reason or reasons for his decision.

Section 3. **Notice of rights.** Whenever a peace officer arrests a person for domestic abuse, as defined in [section 1], if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

Section 4. Section 46-6-105, MCA, is amended to read:

"46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest. *However, a person may be arrested in his home or private dwelling at night if he is being arrested pursuant to 46-6-401(2) for the offense of domestic abuse or aggravated assault against a family member or household member. A summons of a peace officer to the home or private dwelling by a family or household member constitutes an exigent circumstance for making an arrest pursuant to 46-6-401(2).*"

Section 5. Section 46-6-401, MCA, is amended to read:

"46-6-401. Circumstances in which a peace officer makes arrests. *(1)* A peace officer may arrest a person when:

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(a) he has a warrant commanding that such person be arrested;

(b) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(c) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction; or

(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.

(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 6. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule for minor offenses — acceptance by peace officer. (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses, *except for offenses amounting to felonies and the offense of domestic abuse.*

(2) A peace officer may accept bail in behalf of the justice of the peace or city judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered."

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to section 1.

Section 9. **Effective date.** This act is effective July 1, 1985.

Approved May 9, 1985.

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CHAPTER NO. 701

[HB 812]

AN ACT CREATING A MONTANA SCIENCE AND TECHNOLOGY DEVELOPMENT BOARD TO FOSTER ECONOMIC GROWTH; APPROPRIATING MONEY TO THE BOARD FROM THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [this act] to strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities. Because the alternative energy and energy conservation research development and demonstration program, administered by the department of natural resources and conservation, which presently receives 4 ½% of the coal severence taxes allocated pursuant to 15-35-108, would overlap and supplement the program created by [this act] and because the alternative energy and energy conservation research development and demonstration account has a carryover from the 1985 biennium and the department of natural resources and conservation is not presently planning to utilize the entire allocated amount it will receive during the 1987 biennium, [this act] contemplates a temporary, one-time appropriation of a portion of the allocation to the alternative energy and energy conservation research development and demonstration account for funding the science and technology research program of the Montana science and technology development board created in [this act]. The use of funds appropriated from the alternative energy and energy conservation research development and demonstration account established by 90-4-103 for the purposes of [this act] for the 1987 biennium is specifically authorized.

Section 2. **Definitions.** As used in [this act] the following definitions apply:

(1) "Board" means the Montana science and technology development board provided for in [section 3].

(2) "Business and industry" means a privately owned and operated agricultural or commercial enterprise or association that maintains a research, development, commercial, or manufacturing facility in Montana. The enterprise or association need not have its headquarters within the state.

(3) "Department" means the department of commerce created in 2-15-1801.

(4) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

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(5) "Technology development project" means an activity designed to discover, develop, transfer, utilize, or commercialize existing or new technology in order to strengthen and enhance economic development in Montana.

(6) "Technology investment" means an award of funds for a technology development project, including technology transfer, to stimulate Montana's economy. The technology investments authorized by this act are not investments of public funds for purposes of Article VIII, section 13, of the Montana constitution, or Title 17, chapter 6, relating to the unified investment of public funds, but are investments of public resources intended to encourage technologically based economic development that may eventually result in a financial return on those investments.

Section 3. **Montana science and technology development board — allocation — composition — quasi-judicial powers.** (1) There is a Montana science and technology development board. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of 15 members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with broad interest and experience in science and technology and the application of such interest and experience to economic development in Montana. At least 11 members must be from the private sector.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124, except that 2-15-124(1) does not apply.

Section 4. **Meetings.** The board shall meet quarterly and at other times to be determined by the chairman or a majority of the board, subject to the availability of funds.

Section 5. **Organization.** In addition to the chairmanship, the board may establish other offices and select board members to fill these offices.

Section 6. **Powers and duties of the board.** The board shall:

(1) establish policies and priorities that will expand and develop the use of science and technology for economic development in Montana;

(2) provide technical assistance for the transfer of technology to Montana businesses in order to encourage the use of new technology by Montana business and industry;

(3) make technology investments in technology development projects in the following areas that have short- or long-term potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied technological research;

(c) technology assistance and transfer; and

(d) seed capital awards for development and commercialization of new products and processes;

(4) accept grants or receive devises of money or property to be used in Montana for investments described in [this act];

(5) submit to the governor and the legislature a report describing the board's programs and accomplishments by November 1 of each even-numbered year or at the request of the governor; and

(6) adopt rules necessary to implement the provisions of [this act], including but not limited to rules:

(a) governing the conduct of board business;

(b) establishing matching fund requirements for capability, basic research, and seed capital investment programs;

(c) establishing criteria for determining the eligibility of projects and programs for technology investments; and

(d) establishing methods of committing funds, types and amounts of fees, and types of research investments to be made.

Section 7. **Investments to board members prohibited.** (1) Board members may not personally apply for or receive board funds, except as provided in 2-15-124. If an organization with which a member is affiliated applies for board funds, the member must disclose the nature of the affiliation and may not participate in the decisionmaking process of the board regarding the application.

(2) The provisions of 2-2-201 do not apply to board members.

Section 8. **Appropriation authority and funding.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income. [These funds are statutorily appropriated as provided in [section 2 of House Bill No. 12].] No award may be made for activities for which matching funds or participation of financial intermediaries is required until such funds have been committed.

(2) Dollar-for-dollar matching funds are required prior to any expenditure of state funds for research capability development, applied technological research, or seed capital awards or investments provided for in [section 6].

(3) The appropriations and investments made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

Section 9. **Return-on-investment agreements.** (1) The board shall enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of a technology investment. As a part of such an agreement, the board shall require payment of a return that it considers commensurate with the risk of its original investment. The private sector company shall own any patent rights obtained as a result of work done by the private sector company.

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(2) All income received by the board is appropriated to its use. [This income is statutorily appropriated, as provided in [section 2 of House Bill No. 12].] As this income is received, it will supplant the appropriation of coal tax revenues to the board. Such income received by the board in excess of the amount appropriated to it from coal severance tax revenues accrues to a science and technology research and development account in the state special revenue fund.

Section 10. **Accountability.** (1) The board shall develop independent review and audit procedures to ensure that investments made by it are used for the purposes identified in its investment agreements.

(2) The board's technology investment agreements must contain provisions considered necessary by the board to ensure the proper inspection and review of projects, the attainment of project goals, and the maintenance of adequate financial records by recipients of board funds.

Section 11. **Technical advisory councils.** (1) The chairman of the board may recommend to the governor the appointment of technical advisory councils pursuant to 2-15-122 for the purpose of providing advice to the board on selected topics. In making these recommendations, the chairman shall consider the scientific and technological expertise of various candidates and seek appropriate representation from the scientific and academic community, business and industry, agriculture, and the general public.

(2) Advisory council members are entitled to receive reimbursement for travel expenses, as provided in 2-15-122.

Section 12. **Initial board appointments.** The terms of office of the initial appointments to the board are as follows:

(1) seven members must be appointed to terms ending January 1, 1987, subject to the appointment and confirmation of their successors; and

(2) eight members must be appointed to terms ending January 1, 1989, subject to the appointment and confirmation of their successors.

Section 13. **Appropriation.** (1) There is appropriated to the Department of Commerce for the use of the Montana Science and Technology Development Board $2,000,000 from the alternative energy and energy conservation research development and demonstration account of the state special revenue fund for the biennium ending June 30, 1987.

(2) No more than $300,000 of the appropriation may be used over the biennium for the administrative expenses of the Board and staff expenses incurred by the Department. The balance of the appropriation must be used for technology investments. The Board is also given spending authority for all grants, donations, and income it receives.

Section 14. **Coordination instruction.** The bracketed sentences in sections 8(1) and 9(2) are effective only if House Bill No. 12 of the 49th legislature is passed and approved. In addition, if House Bill No. 12 is

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passed and approved, references to sections 8 and 9 are included in the subsection of House Bill No. 12 listing all sections containing statutory appropriations.

Section 15. **Effective date.** This act is effective on passage and approval and applies to coal mined on or after April 1, 1985.

Approved May 10, 1985.

CHAPTER NO. 702

[HB 870]

AN ACT INCREASING LIGHT VEHICLE LICENSING FEES; PROVIDING THAT A PORTION OF THE INCREASED FEE BE DISTRIBUTED TO THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM TO BE USED FOR BLOCK GRANTS; AMENDING SECTIONS 61-3-509, 61-3-533, AND 61-3-536, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes and fees in lieu of tax.** *(1) Except as provided in subsection (2), the* county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motor homes and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall credit each additional light vehicle license fee to a separate suspense fund. At the time he distributes the motor vehicle suspense fund, the treasurer shall distribute the suspense fund provided for in this subsection to the state treasurer for deposit in the local government block grant account provided for in 7-6-302. The funds distributed pursuant to this subsection must be used for the local government block grant program as provided in 7-6-304."

Section 2. Section 61-3-533, MCA, is amended to read:

"**61-3-533. Schedule of fees for automobiles and light trucks.** (1) Except as provided in subsection (3), the following schedule, based on vehicle age and weight, is used to determine the fee imposed by 61-3-532:

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Vehicle Age	Weight			
	2,850 Pounds or less	*Additional Fee*	More Than 2,850 Pounds	*Additional Fee*
Less than or equal to 4 years	$70	*$6*	$90	*$7.50*
More than 4 years and less than 8 years	40	*3*	50	*4*
8 years old and over	10	*1.50*	15	*2*

(2) (a) The fee for a light vehicle is determined by:

(i) multiplying the appropriate dollar amount from the table in subsection (1), *but not the additional fee,* by the ratio of the PCE for the second quarter of the year prior to the year of licensing to the PCE for the second quarter of 1981; and

(ii) rounding the product thus obtained to the nearest whole dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the United States department of commerce.

(3) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is $5."

Section 3. Section 61-3-536, MCA, is amended to read:

"61-3-536. State aid for local government. (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system, *excluding the additional fee allocated to local governments under 61-3-509(2),* had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:

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(i) 0; or

(ii) CT - CF;

(b) CLV = CRL/NC.

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the county treasurer shall determine and certify to the department the number of eligible light vehicles registered in the county on December 31 of the prior year, denoted NC(Y). Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of CLV x NC(Y) for each county.

(5) On March 1 of year Y, the department of commerce shall transmit to each county treasurer a warrant in the amount of CLV x NC(Y).

(6) Upon receipt of the payment provided for in subsection (5), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509."

Section 4. **Effective date — applicability — termination.** (1) This act is effective July 1, 1985, and applies to light vehicles registered on or after July 1, 1985.

(2) This act terminates July 1, 1987.

Approved May 9, 1985.

CHAPTER NO. 703

[HB 12]

AN ACT TO CLARIFY THE LAW RELATING TO APPROPRIATIONS BY DEFINING AND ESTABLISHING THE REQUISITES FOR VALID CONTINUING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 2-9-202, 2-17-105, 2-18-812, 10-3-203, 10-3-312, 10-3-314, 13-37-304, 15-31-702, 15-36-112, 15-70-101, 16-1-404, 16-1-410, 16-1-411, 17-3-212, 17-5-404, 17-5-804, 19-8-504, 19-9-702, 19-9-1007, 19-10-205, 19-10-305, 19-10-506, 19-11-512, 19-11-513, 19-11-606, 19-12-301, 19-13-604, 20-6-406, 20-8-111, 53-24-206, 80-2-103, AND 80-2-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations — type.** There are three types of appropriations within the meaning of "appropriation made by law" as used in Article VIII, section 14, of the Montana constitution:

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(1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills;

(2) temporary appropriations made by valid budget amendment; and

(3) statutory appropriations made by permanent law in conformance with [section 2].

Section 2. **Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

(a) 2-9-202;

(b) 2-17-105;

(c) 2-18-812;

(d) 10-3-203;

(e) 10-3-312;

(f) 10-3-314;

(g) 13-37-304;

(h) 15-31-702;

(i) 15-36-112;

(j) 15-70-101;

(k) 16-1-404;

(l) 16-1-410;

(m) 16-1-411;

(n) 17-3-212;

(o) 17-5-404;

(p) 17-5-804;

(q) 19-8-504;

(r) 19-9-702;

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(s) 19-9-1007;

(t) 19-10-205;

(u) 19-10-305;

(v) 19-10-506;

(w) 19-11-512;

(x) 19-11-513;

(y) 19-11-606;

(z) 19-12-301;

(aa) 19-13-604;

(bb) 20-8-111;

(cc) 20-6-406;

(dd) 53-24-206;

(ee) 80-2-103; and

(ff) 80-2-228.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments.

Section 3. Section 2-9-202, MCA, is amended to read:

"2-9-202. Apportionment of costs — creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs shall be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund *are statutorily appropriated, as provided in [section 2], to the department* to pay claims under parts 1 through

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3 of this chapter. *Expenditures* for actual and necessary expenses required for the efficient administration of the fund *must be made from temporary appropriations, as described in [section 1(1) or (2)], made for that purpose.*

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 4. Section 2-17-105, MCA, is amended to read:

"2-17-105. Insurance on state buildings — use of proceeds — building replacement. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right-of-way purposes, shall be deposited in the state special revenue fund.

(2) These moneys *are statutorily appropriated as provided in [section 2] and* may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3) of this section; or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property but shall be available for future legislative appropriation. If the moneys are not spent or committed within 2 years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building, *and for this purpose the amounts available therefor are statutorily appropriated as provided in [section 2].* If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subsection (2)(c) of this section."

Section 5. Section 2-18-812, MCA, is amended to read:

"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department must maintain state employee group benefit plans on an actuarially sound basis.

(2) The department must maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

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(3) The department must deposit all reserve funds and premiums paid to a state employee group benefit plan, *and such deposits are statutorily appropriated, as provided in [section 2], to the department to be expended for claims under the plan.*

(4) The department must deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) of this section in order to offset the costs of administering the plan.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. The department may not implement any full self insurance alternative prior to July 1, 1981.

(6) The provisions of Title 33 shall not apply to the department when exercising the powers and duties provided for in this section."

Section 6. Section 10-3-203, MCA, is amended to read:

"10-3-203. Acceptance of services, gifts, grants, and loans. *(1)* Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in [section 2], to the governor for the purposes set forth in subsection (1)."

Section 7. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure in biennium. Whenever an emergency or disaster is declared by the governor, *there is statutorily appropriated to the office of the governor, as provided in [section 2], and* he is authorized to expend from the general fund, *an amount* not to exceed $1 million in any one biennium."

Section 8. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or

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disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. *The proceeds are statutorily appropriated, as provided in [section 2], to the governor, who may* receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character."

Section 9. Section 13-37-304, MCA, is amended to read:

"13-37-304. Public campaign fund. (1) There is a public campaign fund within the state special revenue fund provided for in 17-2-102.

(2) All money designated under 13-37-303 shall be deposited in the fund. *Such money in the fund is statutorily appropriated, as provided in [section 2], for the purposes of subsections (3) and (4).*

(3) (a) Five months before the general election in the election year, money in the fund shall be paid over in equal amounts to all eligible candidates for the designated political office according to the percentages in (3)(b). The money shall be spent only for the legitimate campaign expenses of the candidates.

(b) The money shall be distributed in the following percentages:

(i) campaign for office of governor-lieutenant governor, 50%;

(ii) campaigns for offices of chief justice and justice of the supreme court, 50% equally allocated to each eligible campaign fund.

(4) Three months before the general election in a general election year the remainder of any money in the fund shall be remitted to the treasurer of each candidate in the same proportion as provided in subsection (3)(b)."

Section 10. Section 15-31-702, MCA, is amended to read:

"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes collected from banks and savings and loan associations shall be distributed in the following manner:

(a) 20% must be remitted to the state treasurer to be allocated as provided in 15-1-501(2); and

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(b) 80% *is statutorily appropriated, as provided in [section 2], for allocation* to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes distributed under subsection (1)(b) shall be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 11. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas severance taxes. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) 33 ⅓% of the oil severance tax, not to exceed $42 million for the biennium ending June 30, 1985, is deposited in the local government block grant account within the state special revenue fund;

(b) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is *statutorily appropriated, as provided in [section 2], for allocation* to the general fund of the county for distribution as provided in subsection (3);

(c) any amount not allocated to the local government block grant account or the county under subsection (2)(a) or (2)(b) is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under subsection (2)(b) of this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of commerce.

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town."

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Section 12. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the state special revenue fund to the credit of the department of highways. Those funds hereinbelow allocated to cities, towns, and counties shall be paid by the department of highways from the state special revenue fund to such cities, towns, and counties.

(1) $14,000,000 of the funds collected under this chapter *is statutorily appropriated, as provided in [section 2], to the department of highways and* shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $6,350,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $7,650,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the

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county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only."

Section 13. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department is hereby authorized and directed to charge, receive, and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of 10% of the retail selling price on all liquor sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said 10% license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department shall retain in a separate account the amount of such 10% license tax so received. Thirty percent of these revenues *are statutorily appropriated, as provided in [section 2], to the department and* shall be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (2). Four and one-half percent of these revenues *are statutorily appropriated, as provided in [section 2], and* shall be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues shall be deposited in the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. *That proportion of the license tax is statutorily appropriated, as provided in [section 2], to the* department, *which* shall pay quarterly to

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each county treasurer the proportion of the license tax due each county to be allocated to the incorporated cities and towns of the county.

(2) The license tax proceeds allocated to the county under subsection (1) for use by cities and towns shall be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns shall be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(3) The license tax proceeds that are allocated to the department of institutions for the treatment, rehabilitation, and prevention of alcoholism shall be credited quarterly to the department of institutions. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder shall be distributed as provided in 53-24-206."

Section 14. Section 16-1-410, MCA, is amended to read:

"16-1-410. Tax revenue allocation. All revenue received from taxes on beer under 16-1-406 through 16-1-408 over and above $1.50 per barrel of 31 gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The *money in the account is statutorily appropriated, as provided in [section 2], to the* state treasurer *who* shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

Section 15. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine. (1) A tax of 20 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

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(a) 16 cents to the state general fund; and

(b) of the remaining 4 cents:

(i) one-third to the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism;

(ii) one-third *is statutorily appropriated, as provided in [section 2], to the department, for allocation* to the counties, based on population, for the purpose established in 16-1-404; and

(iii) one-third *is statutorily appropriated, as provided in [section 2], to the department, for allocation* to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Section 16. Section 17-3-212, MCA, is amended to read:

"17-3-212. Apportionment of forest reserve funds among counties. The *forest reserve funds and earned interest are statutorily appropriated, as provided in [section 2], to the* state auditor, *who* shall apportion said forest reserve funds *and earned interest for allocation* between the several counties as follows: all funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned to the respective counties."

Section 17. Section 17-5-404, MCA, is amended to read:

"17-5-404. Use of capital projects fund. The capital projects fund shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program. *The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects fund to a special revenue fund, and for such purposes the money is statutorily appropriated as provided in [section 2].*"

Section 18. Section 17-5-804, MCA, is amended to read:

"17-5-804. Use of capital projects account. The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts. *The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects account to a special revenue fund, and for such purposes the money is statutorily appropriated as provided in [section 2].*"

Section 19. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks

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moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601, all such collections *are statutorily appropriated to the account* until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 20. Section 19-9-702, MCA, is amended to read:

"19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies, *which premium tax is statutorily appropriated, as provided in [section 2], for the contributions.* Such payments shall be made annually after the end of each fiscal year but no later than September 1 from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor by April 1 of each year of the annual compensation paid to all active members during the preceding year. Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985."

Section 21. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all surviving spouses or dependent children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

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(ii) the amount of the payments made in the base fiscal year to each surviving spouse or dependent child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The department of administration shall compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be reported to and paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(3) to the administrator after the end of each fiscal year, but no later than September 1. *The premium tax amount paid by the state auditor is statutorily appropriated, as provided in [section 2].* This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. *These payments are statutorily appropriated as provided in [section 2].* These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one dependent child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such dependent children under this section shall be determined as if there were one such dependent child and the supplementary payment shall be made to the dependent children collectively."

Section 22. Section 19-10-205, MCA, is amended to read:

"19-10-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation shall consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy

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of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary designated in the request. *The payment is statutorily appropriated as provided in [section 2].*"

Section 23. Section 19-10-305, MCA, is amended to read:

"**19-10-305. Annual state payments to municipality with police department.** (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-11-512. *The payment is statutorily appropriated as provided in [section 2].*

(2) The payments provided for by 19-10-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

(3) Each city or town which has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(4) Payments provided for in 19-10-205 and subsection (1) of this section are in addition to those provided for in 19-10-301."

Section 24. Section 19-10-506, MCA, is amended to read:

"**19-10-506. Supplement to certain pensions.** (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving such payments prior to July 1, 1975, or in the case of minor children, whose parent,

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the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 19-10-305(2), to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-10-305(1). *The payment is statutorily appropriated as provided in [section 2].*

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively."

Section 25. Section 19-11-512, MCA, is amended to read:

"19-11-512. State auditor to pay association out of insurance premium taxes. (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to 1 ½ mills of the total

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taxable value of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor. *The payment is statutorily appropriated as provided in [section 2].*

(2) If the payment provided for in subsection (1) is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is $100.

(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Section 26. Section 19-11-513, MCA, is amended to read:

"19-11-513. Transfer of premium taxes to state treasury. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this chapter and shall pay an amount equal to the estimate into the state treasury, to the credit of the state special revenue fund. *The payment is statutorily appropriated as provided in [section 2].* Any balances remaining after such payments have been ordered shall be transferred to the general fund."

Section 27. Section 19-11-606, MCA, is amended to read:

"19-11-606. Supplement to certain pensions. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½% on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the state special revenue fund. The *proceeds of such tax are statutorily appropriated, as provided in [section 2], to the* auditor, *who* shall pay claims as provided in subsection (2) of this section and 19-13-1006. As those persons who are to receive the fund die, the tax shall

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be reduced proportionately, and when no eligible person, as defined by subsection (2) and 19-13-1006, survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the state special revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

Section 28. Section 19-12-301, MCA, is amended to read:

"19-12-301. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance shall annually deposit in the volunteer firefighters' fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-11-512, computed before the amounts provided for by 19-11-512 and 19-13-604 are deducted. The moneys shall be used for the payment of claims and administrative costs as provided in this chapter. *The money is statutorily appropriated as provided in [section 2].*"

Section 29. Section 19-13-604, MCA, is amended to read:

"19-13-604. State contribution. The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments shall be made annually to the administrator after the end of each fiscal year but no later than September 1 from the gross premium taxes after deduction for cancellations and returned premiums. *The payment is statutorily appropriated as provided in [section 2].* The administrator shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year, and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective

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July 1, 1983, and to 22.98% effective July 1, 1985. As soon as practicable after receipt of the state contribution, the administrator shall deposit it with the state treasurer."

Section 30. Section 20-6-406, MCA, is amended to read:

"20-6-406. Disbursal and deposit of bonus payments. On or before June 30 of the next 3 consecutive years following the year of application, the superintendent of public instruction shall disburse the bonus payments for approved applications to the enlarged school district, *and such disbursement is statutorily appropriated as provided in [section 2].* The general bonus payment shall be deposited by the county treasurer in the enlarged district's general fund, and the transportation bonus payment shall be deposited by the county treasurer in the transportation fund. These bonus payments shall not be considered as a part of the regular state equalization aid or state transportation aid received by the enlarged district."

Section 31. Section 20-8-111, MCA, is amended to read:

"20-8-111. Duty of board of public education as to property of school. The board of public education *has a statutory appropriation, as provided in [section 2], and* shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property made over to such board or to the state of Montana by purchase, gift, devise, bequest, or otherwise acquired and the proceeds, interest, and income thereof for the use and benefit of said school. All donations, gifts, devises, or grants made before, on, or after October 1, 1983, to the school shall vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students."

Section 32. Section 53-24-206, MCA, is amended to read:

"53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax or the beer license tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private nonprofit or public programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

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(b) The remainder of the proceeds shall be distributed to the counties for use by approved private nonprofit or public programs. *The distribution of these proceeds is statutorily appropriated as provided in [section 2] and must be distributed* in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism."

Section 33. Section 80-2-103, MCA, is amended to read:

"**80-2-103. Administration of trust assets.** Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture under 80-2-102 shall be received by the department and paid by it to the state treasurer for deposit in the expendable trust fund and *shall be statutorily appropriated as provided in [section 2] to be* used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499."

Section 34. Section 80-2-228, MCA, is amended to read:

"**80-2-228. Reserve fund.** (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(3) The reserve hereby created shall be deposited in an expendable trust fund, and *is statutorily appropriated as provided in [section 2] to* the board for the purpose of paying costs of administration, interest, and losses *of the program.*

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221."

Section 35. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

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act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 36. **Effective date.** This act is effective on passage and approval.

Approved May 10, 1985.

CHAPTER NO. 704

[HB 45]

AN ACT INCREASING THE CIGARETTE EXCISE TAX TO 24 CENTS PER PACKAGE; DIRECTING THE DISPOSITION OF THE ADDITIONAL CIGARETTE TAX REVENUE; AMENDING SECTIONS 16-11-111, 16-11-119, AND 17-5-408, MCA; AND PROVIDING A TERMINATION DATE AND AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. *There* is hereby levied, imposed, and assessed and there shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery thereof: *24* cents on each package containing not more than 20 cigarettes and, when packages contain more than 20 cigarettes, then *24* cents on each 20 or fraction of 20 cigarettes contained in such package."

Section 2. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes — retirement of bonds. All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: *33.33% in the state general fund, 53.17%* in the long-range building program fund in the debt service fund type, and *13.5%* in the long-range building program fund in the capital projects fund type."

Section 3. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the debt service account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

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(2) The state pledges and appropriates and directs to be credited to the debt service account *53.17%* of all money received from the collection of the *24-cent* excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 4. **Termination date.** This act terminates June 30, 1987.

Section 5. **Effective date.** This act is effective October 1, 1985, but only if the rate of tax on cigarettes imposed by 26 U.S.C. 5701(b)(1) is reduced from $8 per thousand to $4 per thousand on that date.

Approved May 10, 1985.

CHAPTER NO. 705

[HB 168]

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE TO USE A METHOD OF VALUATION BASED ON CAPITALIZATION OF NET INCOME FOR VALUING AGRICULTURAL LANDS AFTER JANUARY 1, 1986; AMENDING SECTION 15-7-201, MCA; AND PROVIDING AN APPLICABILITY DATE AND A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"15-7-201. (Effective January 1, 1986) Legislative intent — value of agricultural property. (1) Since the market value of many agricultural properties is based upon speculative purchases which do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its *productive capacity.*

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(4) in computing the agricultural land valuation schedules to take effect on January 1, 1991, or on the date that the revaluation cycle commencing January 2, 1986, takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined by the department using the formula I = (P - C) U where:

(i) I is the per-acre net income;

(ii) P is the per-unit price of the commodity being produced;

(iii) C is the per-unit production cost of the commodity being produced; and

(iv) U is the yield in units per acre; and

(c) R is the capitalization rate to be determined by the department as provided in subsection (11).

(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university.

(6) To the degree available, the department shall compile:

(a) commodity price data reflecting the average prices received per unit of measure by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Commodity prices may include wheat, barley, alfalfa hay, grass hay, corn for grain, corn for silage, sugar beets, dry beans, potatoes, cattle, and sheep. Government payments may be considered. Typical rental arrangements may be considered.

(b) production cost data reflecting average costs per unit of measure paid by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Such production costs may include costs relating to irrigation, fertilization, fuel, seed, weed control, hired labor, management, insurance, repairs and maintenance, and miscellaneous items. Variations in specific production cost data, when affected by different levels of production, and typical rental arrangements may be considered.

(7) The department shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to review the data prepared by Montana state university and advise the department on the implementation of subsections (2) through (6). The advisory committee shall include one member of the Montana state university staff.

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(8) Net income shall be determined separately for lands in irrigated use, nonirrigated use, and grazing use and shall be calculated for each use and production level according to the provisions of subsections (4) through (7).

(9) The capitalization rate shall be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate in Montana.

(10) The effective tax rate shall be calculated by the department for each year of the base period by dividing the total estimated tax due on agricultural land in the state by the total productive capacity value of agricultural land in the state."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date — applicability date.** This act is effective January 1, 1986, and applies to any revaluation of property as provided in 15-7-111 after January 1, 1986.

Approved May 10, 1985.

CHAPTER NO. 706

[HB 430]

AN ACT TO ESTABLISH A VOLUNTARY STATEWIDE GENETICS PROGRAM; TO FUND THE PROGRAM BY A CHARGE ON HEALTH INSURERS OF 45 CENTS FOR EACH MONTANA RESIDENT INSURED, WITH A TERMINATION DATE FOR SUCH FUNDING SOURCE; AND TO APPROPRIATE MONEY THEREFOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Voluntary genetics program established.** A voluntary statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

(1) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

(2) comprehensive genetic services to all areas of the state and all segments of the population;

(3) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

(4) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

(a) the nature of genetic processes;

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(b) the inheritance patterns of genetic conditions; and

(c) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

Section 2. **Genetics program charge.** There is imposed upon every private health disability insurer and health service corporation and the state group health self-insurance plan under Title 2, chapter 18, part 8, an annual charge of 45 cents for each Montana resident insured under any individual or group policy in effect as of February 1 of each year for the purpose of funding the voluntary genetics program established in [section 1]. Proceeds of the charge must be submitted to the commissioner on or before March 1 of each year and must be deposited in the state general fund.

Section 3. **Appropriation.** There is appropriated from the general fund to the Department of Health and Environmental Sciences $520,000 for the biennium ending June 30, 1987, to be used for implementing and operating the voluntary genetics program established in section 1.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 50, chapter 19, part 2, and the provisions of Title 50, chapter 19, part 2, apply to section 1. Section 2 is intended to be codified as an integral part of Title 33, chapter 2, part 7, and the provisions of Title 33 apply to section 2.

Section 5. **Extension of authority.** Any existing authority of the department of health and environmental sciences and the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Termination of funding source.** The provisions of section 2 pertaining to the source of funding for the act terminate on June 30, 1987.

Approved March 10, 1985.

CHAPTER NO. 707

[HB 550]

AN ACT TO ALLOW STATE EMPLOYEES TO POOL A PORTION OF THEIR COMPENSATED SICK LEAVE IN A FUND AND TO DRAW UPON THE FUND IF ABSENCE DUE TO EXTENSIVE ILLNESS OR AN ACCIDENT EXHAUSTS THEIR SICK LEAVE; CREATING A STATE EMPLOYEE SICK LEAVE ADVISORY COUNCIL; AMENDING SECTION 2-18-618, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating

sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and thereby become eligible to draw upon the fund if an extensive illness or accident exhausts his accumulated sick leave. The department of administration shall, in consultation with the sick leave advisory council provided for in [section 2], administer the sick leave fund and adopt rules to implement this subsection."

Section 2. **State employee sick leave advisory council.** (1) There is a state employee sick leave advisory council appointed by the governor.

(2) The advisory council consists of nine persons employed in Helena who have demonstrated interest in the development of the sick leave fund provided for in 2-18-618 and appointed as follows:

(a) four from executive branch departments as defined in 2-15-104;

(b) two from offices of elected officers of state government who are not the head of an executive branch department as defined in 2-15-104; and

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(c) one each from the legislative branch of state government, the judicial branch of state government, and the office of the commissioner of higher education as defined in 20-1-101.

(3) The employees of each department, office, or branch and the office of the commissioner of higher education who are contributing members to the sick leave fund may nominate employees for appointment to the advisory council for the governor's consideration.

(4) Appointees to the advisory council serve at the governor's pleasure. The operation of the advisory council may be of no direct cost to the state.

Section 3. **Termination date.** This act terminates on July 1, 1989.

Approved May 10, 1985.

CHAPTER NO. 708

[HB 633]

AN ACT TO REVISE THE LAWS RELATING TO SANITATION IN SUBDIVISIONS BY REQUIRING DEPOSIT OF SUBDIVISION FEES IN THE STATE GENERAL FUND AND REQUIRING THAT FUNDING FOR SUBDIVISION REVIEW BE ALLOCATED FROM THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AMENDING SECTION 76-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, current law provides that the review of subdivisions conducted by the Department of Health and Environmental Sciences is funded entirely through the collection of lot fees paid on subdivisions; and

WHEREAS, a marked decline in the number of subdivision parcels created has resulted in a level of funding inadequate to maintain a core staff capable of fulfilling the requirements of Title 76, chapter 4, on an ongoing basis; and

WHEREAS, it is necessary to provide adequate funding to insure retention of a well-qualified staff to review subdivisions as the statutes require; and

WHEREAS, it is in the public interest to require subdividers to financially contribute to the review process.

THEREFORE, the Legislature intends that a biennial appropriation from the general fund be made to support a well-qualified core staff to review subdivisions and that reimbursement to the general fund be made to the greatest extent possible by the collection of lot fees that adequately cover the cost of review.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt rules setting forth fees, not to exceed $48 per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department

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for deposit in the state *general fund.* The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the *state general fund* as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 2. **General fund support for subdivision review.** Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation.

Section 3. **Appropriation.** There is appropriated from the general fund $136,787 for fiscal year 1986 and $139,825 for fiscal year 1987 to the Department of Health and Environmental Sciences for the subdivision review required by Title 76, chapter 4, part 1.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to section 2.

Section 5. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective date.** This act is effective July 1, 1985.

Approved May 10, 1985.

CHAPTER NO. 709

[HB 727]

AN ACT TO EXPAND THE RULEMAKING AUTHORITY OF LOCAL BOARDS OF HEALTH TO ENSURE MAINTENANCE OF SEWER SYSTEMS NOT CONTROLLED BY THE DEPARTMENT; AND TO INCREASE PENALTIES; AMENDING SECTIONS 50-2-116 AND 50-2-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the county treasurer);

(k) adopt rules which do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth which might cause disease or adversely affect public health;

(iii) on sanitation in public buildings which affects public health;

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(iv) for heating, ventilation, water supply, and waste disposal in public accommodations which might endanger human lives; *and*

(v) for the control and disposal of sewage from private and public buildings and for the maintenance of treatment systems which do not discharge an effluent directly into state waters and which are not required to have an operating permit as required by rules adopted under 75-5-401."

Section 2. Section 50-2-124, MCA, is amended to read:

"**50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than *$200.*

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines shall be paid to the county treasurer of the county in which the violation occurs."

Section 3. **Extension of authority.** Any existing authority of local boards of health to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 10, 1985.

CHAPTER NO. 710

[HB 754]

AN ACT PROVIDING AN ALLOWANCE ADJUSTMENT FOR MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM RETIRED ON OR AFTER JULY 1, 1975, BUT BEFORE JULY 1, 1985, OR THEIR BENEFICIARIES; PROVIDING FUNDING FOR THE ADJUSTMENT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Allowance adjustment.** (1) A monthly allowance paid under 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, but before July 1, 1985, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid on July 1, 1985, to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

(2) At the beginning of each fiscal year, the administrator shall request and the state auditor shall pay to the administrator from the premium tax

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collected from insurance sold in this state to insure against the risks enumerated in 19-11-512(3) an amount sufficient to fund the allowance adjustment provided for in subsection (1).

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 9, and the provisions of Title 19, chapter 9, apply to section 1.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved May 10, 1985.

CHAPTER NO. 711

[HB 766]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING AND APPROPRIATION OF THE SPECIAL FUND; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Fund" means the environmental quality protection fund established in [section 2].

(3) "Hazardous or deleterious substance" means a substance that poses an imminent and substantial threat to public health and that is either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13513.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment or in a manner in which the substance can reasonably be expected to enter the environment if not contained, removed, or abated, but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

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(5) "Remedial action" includes all investigation, monitoring, cleanup, restoration, abatement, removal, replacement, and other actions necessary or appropriate to respond to a release.

Section 2. **Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of [sections 1 through 7].

(2) The fund may be used to carry out the provisions of [sections 1 through 7] and for remedial actions taken by the department pursuant to [sections 1 through 7] in response to a release of hazardous or deleterious substances.

(3) There must be deposited in the fund:

(a) all department expenditures recovered pursuant to [section 6];

(b) funds appropriated to the fund by the legislature; [and

(c) funds received from the legacy program state special revenue account established by [section 4 of the Montana Legacy Act, Senate Bill No. 277] as emergency requests made pursuant to [section 5(5) of the Montana Legacy Act, Senate Bill No. 277];] [and

(d) funds received from the environmental contingency account within the state special revenue fund established pursuant to [section 4 of House Bill No. 922].]

(4) [Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the contingency fund of the legacy program state special revenue account pursuant to [section 5(5)] of the Montana Legacy Act.]

[(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account within the state special revenue fund established pursuant to [section 4 of House Bill No. 922].]

Section 3. **Remedial action.** (1) The department may take remedial action necessary and appropriate to protect the public health, public welfare, or the environment whenever it determines that:

(a) there has been a release or there is a substantial threat of a release; and

(b) the appropriate remedial action will not be done properly and expeditiously by the owner or operator of the vessel, vehicle, or facility from which the release emanates or by any other responsible party.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake any investigation, monitoring, survey, testing, or other information-gathering that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat

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of release and the extent and imminence of the danger to the public health, public welfare, or the environment.

(3) Any person responsible for the release must take immediate action to contain, remove, and abate the release. Except as provided in [section 4], the department is authorized to draw upon the fund in order to take action under subsections (1) and (2) if it has made diligent good faith efforts to determine the identity of the party or parties responsible for the release or threatened release and:

(a) is unable to determine the identity of the responsible party or parties in a manner consistent with the need to take timely remedial action; or

(b) the party or parties determined by the department to be responsible for the release or threatened release have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take such action in a timely manner.

(4) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable pursuant to [section 6], he may be required to reimburse the fund for the costs of the remedial action taken by the department and may be subject to punitive damages.

Section 4. **Emergency action.** If the department determines that immediate response to an imminent threat to public health, public welfare, or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to [section 3(1) and (2)] without the prior written notice required by [section 3(3)(b)]. In such a case, the department must give subsequent written notice to the responsible party within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice.

Section 5. **Actions — general provisions.** (1) No action taken by any person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to [sections 3 and 4] are not subject to the public bidding requirements of Title 18.

Section 6. **Reimbursement and penalties — proceedings — defenses.** (1) Subject only to the defenses set forth in subsection (4), a party responsible for a release is liable for:

(a) all costs of remedial action taken by the department pursuant to [sections 1 through 7]; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release.

(2) If the responsible party fails, without sufficient cause, to properly provide remedial action upon notification by the department pursuant to [section 3(3)(b)], the responsible party may be liable for punitive damages

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in an amount not to exceed two times the amount of any costs incurred by the department pursuant to [section 6].

(3) The department may initiate civil proceedings in district court to recover costs, damages, or penalties under subsections (1) and (2). Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the responsible party resides or has its principal place of business or in the district court of the first judicial district.

(4) No party is liable under subsection (1) or (2) if that party can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of [section 3] when required; or

(b) the release did not emanate from any vessel, vehicle, or facility over which the party had any authority or control and was not caused by any action or omission of the party; or

(c) in the case of assessment of punitive damages, that factors beyond the control of the responsible party prevented the party from taking timely remedial action.

(5) (a) Costs of remedial action recovered pursuant to subsection (1)(a) must be deposited in the fund.

[(b) Damages and penalties recovered pursuant to subsections (1)(b) and (2) must be deposited in the contingency fund of the legacy program state special revenue account established by [section 5(5) of the Montana Legacy Act, Senate Bill No. 277].]

[(c) Damages and penalties recovered pursuant to subsections (1)(b) and (2) must be deposited in the environmental contingency account within the state special revenue fund established pursuant to [section 4 of House Bill No. 922].]

Section 7. **Rulemaking authority.** The department is authorized to adopt rules for the implementation of [sections 1 through 7].

Section 8. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 9. **Appropriation.** All funds received in the environmental quality protection fund in the biennium ending June 30, 1987, are appropriated for the purposes described in subsection (2) of section 2.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Coordination instruction.** (1) The bracketed language in section 2(3)(c) and (4) and section 6(5)(b) is effective only if both this act and [the Montana Legacy Act, Senate Bill No. 277] are passed and approved.

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(2) The bracketed language in section 2(3)(d) and (5) and section 6(5)(c) is effective only if both this act and [House Bill No. 922] are passed and approved.

Section 12. **Effective dates.** (1) Sections 1 through 6 and 8 through 11 are effective July 1, 1985.

(2) Section 7 and this section are effective on passage and approval, but rules adopted pursuant to section 7 may not take effect before July 1, 1985.

Approved May 10, 1985.

CHAPTER NO. 712

[HB 775]

AN ACT CLARIFYING THE DISTRIBUTION PROCEDURE FOR FOREST RESERVE MONEY; PROVIDING THAT DISTRIBUTION TO THE COUNTIES NEED NOT BE MADE UNTIL THE STATE TREASURER RECEIVES FULL PAYMENT OF FEDERAL FOREST RESERVE FUNDS AND REQUIRING PAYMENT OF INTEREST THEREON; AMENDING SECTIONS 17-3-211 AND 17-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

"17-3-211. Forest reserve money. *(1)* The state treasurer, for the purpose of carrying out the provisions of *16 U.S.C. 500*, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state thereunder, *plus interest earned,* to and among the several counties entitled thereto and pay the same to the several county treasurers of such counties within 30 days after receiving *full payment of the* same, as directed by the state auditor.

(2) The forest reserve money shall be invested and all investment earnings credited to the forest reserve account."

Section 2. Section 17-3-212, MCA, is amended to read:

"17-3-212. Apportionment of forest reserve funds among counties. The state auditor shall apportion said forest reserve funds between the several counties as follows: all funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned *plus interest thereon, as provided in 17-3-211,* to the respective counties."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved May 10, 1985.

CHAPTER NO. 713

[HB 798]

AN ACT TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO OPERATE COMMUNITY PROGRAMS FOR PHYSICALLY DISABLED PERSONS; TO AUTHORIZE THE DEPARTMENT TO LICENSE COMMUNITY HOMES FOR THE PHYSICALLY DISABLED; TO PROVIDE FOR STANDARDS FOR PROGRAMS, ADMINISTRATION, HEALTH, AND SAFETY FOR SUCH SERVICES AND COMMUNITY HOMES; AND AMENDING SECTION 50-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature, in recognition of needs of physically disabled persons and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by [this act] a community program to provide facilities and services for the training and treatment of physically disabled persons. The legislature further recognizes the need to provide for the licensing of current community homes for physically disabled persons.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Community home for physically disabled persons" means a family-oriented residence designed to provide residential services for two to eight eligible physically disabled persons that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of social and rehabilitation services established in 2-15-2201.

(3) "Eligible physically disabled person" means a physically disabled person who after an assessment of his disabilities and needs is determined by the department to be in need of services and for whom appropriate services are available under [this act] and who is not eligible for similar services provided under other programs.

(4) "Physically disabled person" means a disabled person with a permanent impairment that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician.

Section 3. **Department authorized to provide services.** The department may establish and provide services for eligible physically disabled persons and receive services, facilities, and funds as the department and other governmental units may be authorized by law to receive or provide.

Section 4. **Department contracts for services — governmental units providing for community homes.** (1) The department may expend

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money appropriated or available for the purposes of [this act] and may contract for services for eligible physically disabled persons with any person or entity providing such services.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, may at their own expense provide services, funds, materials, and facilities for services to community homes for physically disabled persons.

Section 5. **Federal aid.** The department may apply for and receive federal-aid money or other assistance that may be available for programs in the nature of the program created by [this act].

Section 6. **Departmental licensing.** (1) A community home for the physically disabled must be licensed annually by the department.

(2) In accordance with rules established for such purposes, the department may issue temporary and probationary licenses.

Section 7. **Rulemaking.** (1) For the purposes of providing services to physically disabled persons, the department may adopt rules necessary for the administration of the services provided to physically disabled persons under [this act]. Rules adopted may include but are not limited to eligibility for services, facility design and acquisition, program staffing, staff training, service goals and design, quality of services, client placement procedures, client rights and privileges, client grievance procedures, provider grievance procedures, and accounting procedures which include accounting of client financial resources.

(2) (a) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety standards of community homes for physically disabled persons in order to protect residents' rights. The department shall provide for temporary and probationary licensing.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services concerning the standards for health and safety to be adopted.

(3) The department shall, in cooperation with the board of nursing, adopt rules under which a properly trained staff member of a facility providing services to physically disabled persons under [this act] may supervise and assist a client of a facility in taking a medication if the medication is usually self-administered and if a physician has prescribed the assistance.

Section 8. **Health and safety standards for licensing.** (1) Community homes must be certified annually for fire and life safety by the state fire marshal. The state fire marshal shall notify the department whenever a community home has been so certified or refused such certification.

(2) (a) Local health officers shall inspect community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of health and environmental sciences may make the inspection to assure compliance with the standards.

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(b) The inspecting health officer shall notify the department of social and rehabilitation services whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections.

Section 9. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, third-party payers who reimburse health care facilities in the area affected by the proposal, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state, as established by department rule, that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

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(11) "Clinical laboratory" means a facility for the microbiological, sero logical, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Comparative review" means a joint review of two or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(15) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(19) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 300l-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 300l-2.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services

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must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, *community homes for physically disabled persons licensed under [section 6]*, boarding or foster homes for children licensed under *41-3-1142*, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

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(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services.

(29) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(30) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(31) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(32) "Offer" means the holding out by a health care facility that it can provide specific health services.

(33) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(34) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(35) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(36) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(37) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(38) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(39) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2)."

Approved May 10, 1985.

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CHAPTER NO. 714

[HB 900]

AN ACT TO PROVIDE THAT A PEACE OFFICER WITH A LAPSE IN EMPLOYMENT AS A PEACE OFFICER EXCEEDING 3 BUT LESS THAN 5 YEARS MAY FULFILL HIS BASIC PEACE OFFICER TRAINING REQUIREMENTS BY PASSING AN EQUIVALENCY TEST; AMENDING SECTION 7-32-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrolman, fish and game warden, campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, board, commission, or other person authorized by law to appoint peace officers in this state shall appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the board of crime control:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

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(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer must take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the board of crime control by the employing authority.

(5) (a) Except as provided in subsections (b) and (c) of this subsection, it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the board of crime control and whose last date of employment as a peace officer was less than 36 months prior to the date of his present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). *If such peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of his present employment as a peace officer, he may satisfy his basic educational requirements as set forth in subsection (5)(c).*

(c) A peace officer *under the provisions of subsection (5)(b) or a peace officer* who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than *60* months prior to the date of his present appointment as a peace officer may, within 1 year of his *present employment or* initial appointment as a peace officer within this state, satisfy his basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, he must complete the basic course within 120 days of the date of the test.

(6) The board of crime control may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. Factors which the board may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of his immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment shall, upon application to the board of crime control, be issued a basic certificate by the

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board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 10, 1985.

CHAPTER NO. 715

[HB 919]

AN ACT TO REALLOCATE A PORTION OF COAL SEVERANCE TAX REVENUES TO THE STATE GENERAL FUND, ALTERNATIVE ENERGY PROGRAM, AND THE HIGHWAY PROGRAM; AMENDING SECTIONS 15-35-108 AND 90-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until *July 1, 1987*, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(c) *26%* to the state special revenue fund to the credit of the local impact and education trust fund account;

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(d) for each of the 2 fiscal years following June 30, 1977, 13% to the state special revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(f) 1% to the state special revenue fund to the credit of the county land planning account;

(g) 1 ¼% to the credit of the renewable resource development bond fund;

(h) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the state special revenue fund for conservation districts;

(k) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(l) 4% to the highway reconstruction trust fund account in the state special revenue fund;

(m) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, *and before July 1, 1985,* seven-fifteenths *and after June 30, 1985, 23.08%* of the revenue paid into the local impact and education trust fund account, to local governmental units, state agencies, and governing bodies of federally recognized Indian

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tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

Section 3. **Coordination instruction.** If House Bill No. 669 is passed and approved, the percentage in section 1 of this bill amending 15-35-108(3)(c) shall be adjusted from 26% to 24% and the percentage in section 2 amending 90-6-205(5) shall be adjusted from 23.08% to 16 ⅔%.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and applies to coal mined on or after April 1, 1985.

Section 5. **Termination date.** This act terminates July 1, 1987.

Approved May 10, 1985.

CHAPTER NO. 716

[HB 942]

AN ACT TO REQUIRE BIENNIAL APPROPRIATIONS FROM THE RESOURCE INDEMNITY TRUST FUND TO IMPLEMENT CERTAIN HAZARDOUS WASTE LAWS; AMENDING SECTION 15-38-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

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(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. *The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 10, 1985.

CHAPTER NO. 717

[HB 947]

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE PROGRAM; TO APPROVE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO APPROVE LOANS FROM RENEWABLE RESOURCE DEVELOPMENT BOND PROCEEDS AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO REAUTHORIZE LOANS APPROVED BY THE 1983 LEGISLATURE; TO APPROVE THE ISSUANCE OF STATE OF MONTANA COAL SEVERANCE TAX BONDS TO FINANCE THE REHABILITATION AND REPAIR OF THE STATE MIDDLE CREEK DAM PROJECT AND PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO AUTHORIZE USE OF INTEREST EARNINGS ON PROCEEDS OF WATER DEVELOPMENT BONDS TO FINANCE GRANTS APPROVED IN THIS ACT; TO REAUTHORIZE STATE OF MONTANA COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 1983 LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO REAUTHORIZE LOANS FOR CERTAIN PROJECTS APPROVED BY THE 1983 LEGISLATURE FOR WHICH STATE OF MONTANA COAL SEVERANCE TAX BONDS HAVE BEEN SOLD; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1987; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AMENDING SECTION 90-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations from the water development state special revenue account.** (1) There is appropriated to the Department of Natural Resources and Conservation up to $196,550 from the water development state special revenue account during the biennium ending June 30,

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1987, for grants to private persons for water development projects and activities pursuant to the provisions of Title 85, chapter 1, part 6. This appropriation is from money available in the water development state special revenue account for grants for water development projects and activities under 85-1-604(3)(c) and sections 3 and 4 of this act.

(2) There are appropriated to the Department of Natural Resources and Conservation the interest earnings from the proceeds of water development bonds and renewable resource development bonds issued to finance loans authorized by this act. Interest earnings must be deposited in the water development state special revenue account and the renewable resource development account, respectively.

(3) There are appropriated to the Department of Natural Resources and Conservation all other funds not appropriated under subsection (1) and available for grants to state and local government entities from the water development state special revenue account during the biennium ending June 30, 1987. This appropriation is from money available in the water development state special revenue account and renewable resource development account for grants and from the water development or renewable resource accounts for loans for water development projects and activities under 85-1-604(3)(c) and section 13 of this act. The funds appropriated in this subsection must be awarded by the Department of Natural Resources and Conservation to the following entities for the described purposes and in the described grant amounts, subject to the conditions set forth in this act. The Legislature, pursuant to 85-1-605, approves the grants listed below, with grants to be made in the order indicated in the following prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or utilized by higher ranked projects and activities must be provided for projects and activities farther down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this subsection results in a cutoff that ends at a point at which more than one project or activity is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the Department of Natural Resources and Conservation, with the advice of the water development advisory committee formed pursuant to 2-15-122. Actual rank and score of the various projects and activities are contained within the Department's renewable resource and water development program project evaluations and recommendations report for the 1986-87 biennium.

Water Development Program Prioritized Projects and Activities

G: Grant L: Loan

APPLICANT/PROJECT		
SWAN RIVER YOUTH CAMP Sewage Treatment Plant	G	$444,100
MONTANA STATE PRISON Expansion of Sewer	G	68,500
MONTANA BUREAU OF MINES AND GEOLOGY Statewide Ground Water Information Center	G	100,000
TRIANGLE CONSERVATION DISTRICT	G	100,000

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Triangle Saline Seep		
CARBON CONSERVATION DISTRICT	G	68,000
Willow Creek Stream Corridor Management		
UNIVERSITY OF MONTANA — MONTANA FOREST AND EXPERIMENT STATION/Riparian Vegetation System	G	85,000
ROSEBUD CONSERVATION DISTRICT	G	5,500
Vegetative Streambank Stabilization		
TETON COUNTY CONSERVATION DISTRICT	G	100,000
Upper Teton Aquifer Study		
TOWN OF EKALAKA	G	17,000
Water and Sewer Facilities Plan		
LEWIS & CLARK/JEFFERSON VALLEY CONSERVATION DISTRICT	G	100,000
Prickly Pear Stream Stabilization		
CUT BANK NORTH GLACIER WATER AND SEWER DISTRICT	G	50,000
North Cut Bank Sewer System	L	125,000
SEELEY LAKE MISSOULA COUNTY WATER DISTRICT	G	9,000
Development of Water and Sewer System Facilities Plan		
UNIVERSITY OF MONTANA	G	100,000
Missoula Aquifer Study		
STILLWATER CONSERVATION DISTRICT & BEARTOOTH RC&D	G	80,000
Saline Seep Reclamation and Plowout		
GREENFIELDS IRRIGATION DISTRICT	G	17,000
Rehabilitation & Automation of Bifurcation Structure (new)	L	32,244
GREENFIELDS IRRIGATION DISTRICT	G	54,000
Rehabilitation & Automation of Bifurcation Structure (old)		
CARBON CONSERVATION DISTRICT	G	19,000
Cottonwood Creek Stream Corridor Management		
ANTELOPE WATER/SEWER DISTRICT	G	60,000
Water/Sewer System Construction	L	100,000
DANIELS COUNTY CONSERVATION DISTRICT	G	90,000
Poplar River Monitoring		
TOWN OF CASCADE/Landfill	G	44,000
Rehabilitation and Park Development	L	66,000
SHERIDAN COUNTY	G	75,000
Northeast Montana Ground Water Study		
TREASURE COUNTY CONSERVATION DISTRICT	G	17,000
Irrigation System Reorganization		
TOWN OF SACO	G	41,800
Water Systems Improvement	L	158,200
PRIVATE WATER USERS ASSOCIATION	G	20,000
Weed and Moss Catcher	L	100,000
BOX ELDER RURAL IMPROVEMENT DISTRICT	G	28,000
Well Development	L	142,000

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SHERIDAN COUNTY — RESERVE SEWER DISTRICT	G	33,000
Reserve Sewer System	L	117,000
PIPESTONE DITCH COMPANY	G	6,000
Gravity Irrigation System	L	29,000
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS	G	100,000
Gartside Dam Repair with Possible Emergency Breach		
BUTTE/SILVER BOW	G	82,000
Sewer Sludge Application and Plant Trials		
DEER LODGE VALLEY CONSERVATION DISTRICT	G	15,000
Gilman Wilberly Group Flood Protection		
PRIVATE WATER SYSTEM ASSISTANCE CORPORATION	G	16,700
Potable Water System Technical Advisor		
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS	G	56,000
McNeil Slough Dam Restoration		
MONTANA BUREAU OF MINES AND GEOLOGY	G	44,000
Madison Valley Arsenic Ground Water Study		
PRIVATE WATER USERS ASSOCIATION	G	33,000
Ditch Rehabilitation	L	167,000
MONTANA STATE UNIVERSITY	G	85,000
Ground Water Exploration of Bozeman Fan		
WHITEFISH WATER & SEWER DISTRICT	G	100,000
Whitefish Lake Critical Area Study		
MEAGHER COUNTY/Newlan Creek Dam	G	100,000
and Irrigation Feasibility		
PRIVATE RURAL WATER CORPORATION	G	88,000
Water System and Supply		
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS	G	35,000
Streambank Preservation		
TREASURE COUNTY CONSERVATION DISTRICT	G	100,000
Low Interest Loans for Underground Pipe Placement		
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — CONSERVATION		
DISTRICTS DIVISION	G	66,500
Riparian Management Program		
CUSTER COUNTY	G	25,000
Fairgrounds Sewer System	L	92,380
MONTANA STATE UNIVERSITY DEPARTMENT OF ENGINEERING	G	25,000
Guidelines for Community Water Demands		
GLEN LAKE IRRIGATION DISTRICT	G	32,000
Therriault Creek Siphon Construction	L	123,000
COOKE CITY WATER USERS ASSOCIATION	G	42,000
Water System Improvements	L	158,000
RED LODGE	G	100,000
Park & Irrigation System Development		

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CITY OF BELT	G	33,000
Sewage System Lift Station	L	127,000
CITY OF POLSON	G	42,000
South Polson Water Collection Project	L	158,000
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — CONSERVATION		
DISTRICTS DIVISION		
Streambank Reclamation	G	80,500
FAIRFIELD/Open Ditch Conversion	G	80,500
	L	34,500
PRIVATE CANAL AND RESERVOIR COMPANY	G	8,350
Canal Dredging for Water Supply	L	41,650
CITY OF PLENTYWOOD	G	37,000
Water System Improvement Facility		
TOWN OF SCOBEY	G	5,000
Water System Improvements	L	3,990
MONTANA BUREAU OF MINES AND GEOLOGY	G	96,000
Butte Mine Flooding Monitoring		
TOWN OF DUTTON	G	19,300
Municipal Water Supply Study		
CITY OF HAMILTON	G	24,500
Water System Renovation	L	24,568
CITY OF SHELBY	G	25,000
Water Supply Development	L	56,625
CASCADE COUNTY RID #26	G	33,000
Water Line Replacement	L	167,000
GORE HILL WATER DISTRICT	G	27,000
Water System Improvements	L	135,000
TOWN OF KEVIN	G	25,000
Water Storage Reservoir Repair	L	175,000
PRIVATE HOMEOWNERS ASSOCIATION	G	3,400
New Well and Pump	L	16,000
SUN PRAIRIE ESTATES COUNTY WATER DISTRICT	G	20,000
Water System Improvements	L	101,000
CITY OF HELENA	G	17,000
Water System Storage Improvement	L	85,310
EAST BENCH IRRIGATION DISTRICT	G	39,000
Hydropower Development Feasibility Study		
PRIVATE INDIVIDUAL	G	2,500
Low Pressure Sprinkler System Installation	L	27,500
CITY OF MILES CITY	G	3,800
Park Irrigation System Conversion		
CITY OF MILES CITY	G	26,000
Upgrade Recreation Lake Boat Facilities		
GREENFIELDS IRRIGATION DISTRICT	G	28,000
Hydropower Feasibility Study		
TOWN OF WEST YELLOWSTONE	G	21,000
Storm Sewer/Water System Study		
PRIVATE PARTNERSHIP	G	22,000
Small Hydropower Development	L	138,000

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CITY OF HELENA	G	21,000
Sewage Treatment Plant Effluent Pipeline	L	133,525
MEAGHER COUNTY	G	94,000
Golf Course Gravity Flow Irrigation System		

Section 2. **Appropriations under the renewable resource development program.** (1) There are appropriated to the Department of Natural Resources and Conservation all available funds from the renewable resource development account during the biennium ending July 30, 1987, for projects under the renewable resource development program.

(2) The Department of Natural Resources and Conservation shall award grants to the following entities for the described purposes and in the described amounts. The Legislature, pursuant to 90-2-111, approves the grants listed below, with grants to be made in order of priority ranking within each renewable resource development category, except renewable resource development grants for water development projects and activities, which must be made with the order of priority listed in section 1. The funds appropriated under this section must be divided among the categories and in the percentages as required by 90-2-113. Funds not accepted or used by higher ranked projects in each category must be provided for projects further down the priority list in each category that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the Department of Natural Resources and Conservation, with the advice of the water development advisory committee formed pursuant to 2-15-122. If the projects approved in the categories of "timber stand improvement" and "conservation districts, for development of their water reservations" do not use up the total allocations for those categories, as provided in 90-2-113(1)(a) and (1)(d), any excess funds must first be used for the project approved in the category of "other". After the project in "other" is funded, any remaining funds must be used for the projects approved in the category of "improvements on agricultural land" and then for the projects approved in the category of "water development". Any projects in the category of "improvements on agricultural land" that are fully funded by House Bill 922 must not be funded under this act. Actual rank and score of the various projects are contained within the Department's renewable resource and water development programs project evaluations and recommendations report for the 1986-87 biennium.

Renewable Resource Development Program
Prioritized Projects by Category for Funding

G: Grant

I. TIMBER STAND IMPROVEMENT

APPLICANT/PROJECT/APPLICANT		
UNIVERSITY OF MONTANA	G	$19,000
Montana Forest and Conservation Experiment Station		
MONTANA DEPARTMENT OF STATE LANDS	G	91,000

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State Timber Stand Improvement

II. IMPROVEMENTS ON AGRICULTURAL LAND

APPLICANT/PROJECT		
TOOLE COUNTY — Marias River Basin Weed Control	G	46,000
MILE HIGH CONSERVATION DISTRICT Reclamation of Heavy Metal Contaminated Agricultural Lands	G	88,400
MONTANA STATE UNIVERSITY/TETON COUNTY Leafy Spurge; Biological Control	G	14,000
JEFFERSON COUNTY CONSERVATION DISTRICT Cooperative Noxious Weed Control	G	46,000
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS Noxious Plant Control on State Wildlife Management Areas	G	83,000
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — CONSERVATION DISTRICTS DIVISION Grazing Management for Noxious Weed Control	G	7,000
MONTANA DEPARTMENT OF AGRICULTURE Coordinated Weed Management Project	G	65,000
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — CONSERVATION DISTRICTS DIVISION Rangeland Weed Control Cost Assistance	G	90,000
VALLEY COUNTY CONSERVATION DISTRICT Leafy Spurge Control Project	G	13,000

III. CONSERVATION DISTRICTS, FOR DEVELOPMENT OF THEIR WATER RESERVATIONS

APPLICANT/PROJECT		
LOWER YELLOWSTONE CONSERVATION DISTRICT DEVELOPMENT COMMITTEE/Reserved Water Development Investigation	G	25,000
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — CONSERVATION DISTRICTS DIVISION Water Reservation Development Program	G	70,000

IV. OTHER

APPLICANT/PROJECT		
GALLATIN COUNTY — West Yellowstone/Hebgen Basin Bear-Proof Refuse Container	G	70,000

Section 3. **Opportunity to receive loans for projects that do not receive grants.** Sponsors of recommended projects and activities on the prioritized lists in sections 1 and 2 that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project, subject to the conditions described in this act. The interest rate applicable to these loans must be the rate paid on bonds issued pursuant to this act.

Section 4. **Approval of loans from bond proceeds and completion of appropriation.** (1) The Legislature, pursuant to 85-1-605 and 90-2-107, hereby approves loans to private sponsors approved by the Director of the Department of Natural Resources and Conservation during the 1985-86 biennium and the loans identified and described in section 1 for projects and activities to public entities from water development bond proceeds [and interest earnings on such proceeds deposited in the water development account] and loans from renewable resource development bond proceeds deposited in the renewable resource development account. Bond proceeds may be used for the payment of bond issuance costs. Funds are appropriated for these costs to a maximum of 4% of the amount of each bond sale.

(2) The approval of specific loans completes an appropriation of the coal severance tax proceeds allocated by 15-35-108 to the water development bond account for the purpose of paying, in the manner established by 85-1-619, principal of and interest and redemption premiums on any water development bonds issued to provide the proceeds for the loans to private and public entities approved in section 1, and also an appropriation to the renewable resource debt service fund for the purpose of paying, in the manner established by 90-2-124, principal of and interest and redemption premium on any renewable resource development bonds issued to provide the proceeds for the loans to public entities approved in sections 1 and 2.

Section 5. **Reauthorization of loans approved by the 1983 Legislature.** The 1983 Legislature in House Bill 897 approved loans from the water development bond account for the Antelope water and sewer district in the amount of $100,000, the Geraldine water district in the amount of $100,000, the town of Culbertson in the amount of $100,000, and the town of Hamilton in the amount of $182,000. Eighty-two thousand dollars of the Hamilton loan was a grant for which revenues were not collected and which was offered and accepted as a loan. Loans for the entities described in this section, from proceeds of the water development program general obligation bond, October 1983, are hereby authorized.

Section 6. **Coal severance tax bond authorized.** (1) The Legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program. The Legislature finds that the water development projects in this section meet the provisions of 17-5-702. The Board of Examiners may issue State of Montana coal severance tax bonds in an amount not to exceed $51,652,528 for the purposes of making loans and financing state projects, establishing a reserve for the bonds, and of paying the costs of issuance. Funds are appropriated for these costs of issuance to a maximum of 4% of the amount of each bond sale.

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(2) The Board of Examiners may issue State of Montana coal severance tax bonds for loans to political subdivisions and local government entities not to exceed the loan amount listed for the project.

GROUP A Notwithstanding the conditions set forth in section 14, the interest rate for projects in this group may be four percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	LOAN AMOUNT
DUTTON, TOWN OF Water Supply Construction	$ 652,000
EAST BENCH IRRIGATION DISTRICT Gravity Irrigation System	400,000
GLASGOW, CITY OF Water Supply Source	5,662,000
NEIHART, TOWN OF Water System Improvement	550,000
YELLOWSTONE COUNTY Cedar Park Water System	555,000
YELLOWSTONE COUNTY Oxbow Area Water Supply	1,100,000

GROUP B Notwithstanding the conditions set forth in section 14, the interest rate for projects in this group may be three percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	LOAN AMOUNT
COOKE PASS-COOKE CITY-SILVER GATE County Water/Sewer District Sewer Improvements	$ 336,730
FORT BENTON, CITY OF Water System Improvement	753,060
POPLAR, TOWN OF Water System Improvement	477,260
WORDEN/BALLENTINE YELLOWSTONE COUNTY Water and Sewer District Reservoir Construction	500,000
EVERGREEN WATER AND SEWER DISTRICT Flathead County Sewer System	3,226,900
HUNGRY HORSE WATER AND SEWER DISTRICT Water System Improvements	762,430
DODSON, TOWN OF New Water Well	170,000
DRUMMOND, TOWN OF Fire and Water Project	304,600
LAKESIDE COUNTY SEWER DISTRICT Wastewater Treatment Facility	1,190,000
BOZEMAN, CITY OF Lyman Creek Water System Improvement	726,079
CHARLO WATER USERS ASSOCIATION	269,440

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Distribution System Replacement	
EAST HELENA, CITY OF	434,434
Water System Improvement	
EKALAKA, TOWN OF	395,250
Water System Renovation	
HAVRE, CITY OF	2,590,000
Water System Improvement	

GROUP C Notwithstanding the conditions set forth in section 14, the interest rate for projects in this group may be two percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	LOAN AMOUNT
LOCKWOOD IRRIGATION DISTRICT	$ 247,000
System Renovation	
PONDERA COUNTY CONSERVATION DISTRICT	750,000
Lower Birch Creek Watershed	
SEELEY LAKE WATER DISTRICT	310,706
Water Storage Tank	
WHITEHALL, TOWN OF	300,400
Sewer Project	
WHITE SULPHUR SPRINGS, TOWN OF	639,150
Water System Improvements	
DENTON, TOWN OF	185,000
Water Supply System	
JUDITH GAP, TOWN OF	100,000
Water Supply Source	
LIMA, TOWN OF	376,500
Water Facilities Update	

GROUP D Notwithstanding the conditions set forth in section 14, the interest rate for projects in this group must be the rate at which the state bond is sold.

	LOAN AMOUNT
MIDDLE CREEK DAM REHABILITATION	$ 3,500,000
MILK RIVER IRRIGATION DISTRICT	17,869,000
Tiber Dam Power Project	
ANACONDA/DEER LODGE COUNTY	500,000
Sewage Facilities	
HILL COUNTY WATER DISTRICT	1,410,000
Rural Water Supply	

GROUP E Notwithstanding the conditions set forth in section 14, the interest rate for the project in this group must be 3% over a 30-year term.

	LOAN AMOUNT
EAST BENCH IRRIGATION DISTRICT	$1,317,295
McHessor Dry Gulch Gravity Irrigation System	

GROUP F Notwithstanding the conditions set forth in section 14, the interest rate for the project in this group must be 8% over a 20-year term.

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	LOAN AMOUNT
TIBER COUNTY WATER DISTRICT New Control and Monitoring System	$559,260

GROUP G Notwithstanding the conditions set forth in section 14, the interest rate for projects in this group must be 6% over a 30-year term.

	LOAN AMOUNT
GERALDINE COUNTY WATER DISTRICT Rural Water System	$ 313,910
ROOSEVELT COUNTY RURAL WATER DISTRICT Rural Water System	2,219,124

(3) State of Montana coal severance tax bonds to finance the gravity-fed sprinkler system project for the East Bench irrigation district were authorized by the 1983 Legislature in an amount not to exceed $3,230,000. The district plans to borrow $1,250,000, and the district is still expecting to receive confirmation of a federal loan for the remainder. The Legislature reauthorizes the Board of Examiners to issue State of Montana coal severance tax bonds in an amount not to exceed $1,980,000 if the loan from the U.S. Bureau of Reclamation is not authorized. The loan must carry the interest rate of 3% for the term of the loan, as authorized by the 1983 Legislature. Remaining grant funds approved for this project by the 47th Legislature in House Bill 709 are reappropriated for the project for the biennium ending June 30, 1987.

(4) (a) The Legislature finds that the following state water projects for rehabilitation and repair for which coal severance tax bonds were authorized by the 1983 Legislature in House Bill 885 have not been completed. Further, inflation or additional feasibility studies have precipitated revised cost estimates for some of these projects. The Board of Examiners is authorized to issue State of Montana coal severance tax bonds for these projects to a maximum amount listed in this section. The state bond rate must be paid on these loans. The list describes both the 1983 authorized amount and a revised amount when appropriate.

YELLOW WATER DAM in Petroleum County 1985 authorization amount	$110,000
COTTONWOOD DAM in Park County 1985 authorization amount	230,000

(b) Bonds may be issued by the Board of Examiners after the water users for each project have entered into contractual agreements providing for the repayment of the cost of repair and rehabilitation at a rate of interest equal to that which must be paid on bonds issued pursuant to this section. The repayment money from each project is pledged, dedicated, and appropriated to the special debt service bond account established in the state treasury for the benefit of the bonds approved for such projects.

(5) The Legislature finds that the following state hydroelectric projects for which coal severance tax bonds were authorized by the 1983 Legislature in House Bill 885 have not been completed; further, inflation and additional feasibility studies have precipitated revised cost estimates for some of these projects:

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(a) The Board of Examiners is authorized to issue State of Montana coal severance tax bonds for these projects up to the amounts listed in this section.

PAINTED ROCK DAM under the authorization granted by the federal energy regulatory commission for project number 4657:
1985 authorization $10,047,000

BROADWATER DAM under authorization pending before the federal energy regulatory commission for project number 2853:
1985 authorization 23,044,000

COONEY DAM under an authorization from the federal energy regulatory commission to be applied for pursuant to the preliminary permit issued for project number 4700:
1985 authorization 4,512,000

(b) Bonds approved in this section may not be issued by the Board of Examiners until the Board of Natural Resources and Conservation has determined that a project is feasible and has otherwise complied with the requirements of Title 85, chapter 1, part 5, for the development of hydropower at water projects under the control of the Department. The Board of Natural Resources and Conservation and the Board of Examiners must find that on the average, over the life of the project, revenues will be generated to repay a loan at the rate at which the state bond is sold. However, in some years the appropriation of funds from the coal severance tax bond account may be required.

(c) The Board of Examiners may allocate a portion of the bond proceeds for a specific project for the operation and maintenance of the hydropower facility.

(d) The maximum amount of bond proceeds for each project approved in this section must also include all and any relocation, reconstruction, rehabilitation, or other costs for which the Department is legally liable that affect existing irrigation systems, private lands, utility lines, mines, roads, highways, and railroads which are subsequently affected by the development of a respective hydroelectric project.

(e) The hydropower revenues from each project are pledged, dedicated, and appropriated to a debt service account established in the state treasury for the benefit of bonds approved to finance the project. Revenues in excess of the amount required to meet the debt service requirements may be allocated to the water development special revenue account to operate, maintain, and rehabilitate state-owned projects.

(6) There is approved a loan for the amount of $484,270 for improving the water supply to the town of East Glacier. The Department of Natural Resources and Conservation is directed to classify this loan into one of the groups set forth in subsection (2) and report this classification to the Legislative Finance Committee.

Section 7. **Appropriation and creation of debt for coal severance tax bonds.** (1) The Legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the Legislature as

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required by Article IX, section 5, of the Montana Constitution, pledges, dedicates, and appropriates from the coal severance tax bond subfund all money necessary for the payment of principal and interest not otherwise provided for on the State of Montana coal severance tax bonds authorized by this act to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the further provisions of this act.

(2) The Legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana Constitution, authorizes the creation of a state debt in an amount not to exceed $37,603,000 for the development of the state hydroelectric projects approved in section 6, in an amount not to exceed $3,840,000 for the rehabilitation of state water projects approved in section 6, and in an amount not to exceed $47,652,528 for loans to political subdivisions of the state and local government entities for water development projects approved in section 6, all for the issuance of State of Montana coal severance tax bonds authorized by this act.

(3) In connection with the issuance of coal severance tax bonds, the Board of Examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The Board of Examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(b).

(5) Notwithstanding provisions in section 6(5)(e), loan repayments from loans financed with State of Montana coal severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section. Repayment, both principal and interest, of administrative fees borrowed from bond proceeds must be made to the water development state special revenue account created in 85-1-604 to be reused for the administration of the water development loan and grant program.

Section 8. **Projects not completing requirements — loans reauthorized.** The Legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 1983 Legislature in House Bill 885 might not complete the requirements necessary for the loan transaction prior to June 30, 1985. State of Montana, Coal Severance Tax Bonds, 1984 Series A, were sold in August 1984 to finance these loans. Loans from the proceeds of the State of Montana, Coal Severance Tax Bonds, 1984 Series A, for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 1983 Legislature in House Bill 885 and described in this section to enable financing during the 1986-87 biennium, if necessary.

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GERALDINE COUNTY WATER DISTRICT	
Rural Water System	$1,733,200
Interest rate: 6.5% for the 20-year term of the bond	
EAST BENCH IRRIGATION DISTRICT	
Conversion from pumped to Gravity-Fed Sprinkler System	1,200,000
Interest rate: 3% for the 30-year term of the bond	
PONDERA CONSERVATION DISTRICT	
Irrigation System Rehabilitation	555,000
Interest rate: 6% for the 20-year term of the bond	
BIGFORK COUNTY WATER AND SEWER DISTRICT	
Sewer System	250,000
Interest rate: 7% for 5 years, and 10.26% for the remaining 15 years of the bond term	
CITY OF BELGRADE	
Water Well Improvements	115,000
Interest rate: 7% for 5 years, 10.26% for the remaining 15 years of the bond term	
TOWN OF THREE FORKS	
New Water Supply System	435,000
Interest rate: 7% for 5 years, and 10.26% for the remaining 15 years of the bond term	
MARTINSDALE STATE PROJECT	
In Meagher and Wheatland Counties	250,000
Interest rate: state bond rate	

Section 9. **Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development state special revenue account from the resource indemnity trust fund by 15-38-202(2) during the biennium ending June 30, 1987, may be used only for the purposes set out in 85-1-604(3)(c).

Section 10. **Emergency grants.** There is appropriated to the Department of Natural Resources and Conservation up to $125,000 from the water development state special revenue account to be used for emergency projects pursuant to Senate Bill 283. If these funds are not needed for emergencies, they may be used for grants approved in section 1 of this act.

Section 11. **Conditions of loans and grants.** Disbursement of funds under this act for both loans and grants is subject to the following conditions, which must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the Department; reductions in a scope of work or budget must not affect priority activities or improvements;

(2) other funds required for project completion have been committed and the commitment is documented;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water development program project evaluations and recommendations report for

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the 1986-87 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(4) execution of a loan or grant agreement with the Department of Natural Resources and Conservation; and

(5) other specific requirements are accomplished as considered necessary by the Department of Natural Resources and Conservation to accomplish the purpose of the loan or grant as evidenced from the application to the Department of Natural Resources and Conservation or the proposal to the Legislature.

Section 12. **Conditions for grants.** Notwithstanding the conditions described in section 1, grant funds are disbursed in the order of priority listed in section 1 as coal tax revenues are received. No project approved by this act is entitled to receive grant funds not collected and allocated to the water development state special revenue account or the renewable resource development account.

Section 13. **Conditions for loans.** Each sponsor authorized for a loan from water development bond proceeds, renewable resource development bond proceeds, or coal severance tax bond proceeds may be required to pay to the Department of Natural Resources and Conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the Department to complete the loan transaction.

Section 14. **Interest rates on loans.** Loans made from proceeds of State of Montana coal severance tax bonds must be at interest rates specified in section 6, except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1986-87 biennium. If the bonds or notes bear interest at an adjustable rate, the Department shall establish, at the time of the sale of the bond, an assured rate of interest thereon as if the bonds bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to section 6.

Section 15. **Private and discount purchase of loans.** Loans to local government entities and political subdivisions and bonds, warrants, and notes issued in evidence thereof may be made and purchased by and sold to the Department at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such local government entities or political subdivisions.

Section 16. Section 90-2-107, MCA, is amended to read:

"90-2-107. State and local renewable resource development loans. (1) The department of natural resources and conservation may recommend to the governor that loans be made from the renewable resource development account established by this part to any department, agency, board, commission, or other division of state government or to any city, county, or other political subdivision or local government body of the state.

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(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those loan proposals having his approval to the legislature by *January 1 of the year of* any *regular* legislative session. Those loan proposals approved by the legislature shall be administered by the department.

(4) The provisions of 90-2-104, 90-2-108, 90-2-109, and 90-2-128 shall govern and apply to the local renewable resource loans herein provided for.

(5) Both the loans provided for by this section and the grants provided for by 90-2-111 may be submitted to the governor and approved by the legislature as may be necessary to jointly finance any project."

Section 17. **Water development program direction — future preference for appropriations.** (1) The Department of Natural Resources and Conservation is directed to recognize in particular the primary role of agriculture in the state's economy and the needs of its agricultural constituency when it formulates its promotion, assistance, and development programs.

(2) In evaluating proposals for use of funds from the water development state special revenue account for the biennium ending June 30, 1989, the Department of Natural Resources and Conservation and the Legislature shall give preferential consideration to proposals that promote:

(a) the water reservation program established by 85-2-316;

(b) the development of the state water plan required by 85-1-203; and

(c) other state water programs recommended by the Legislative Water Policy Committee established in section 19 of House Bill 680.

Section 18. **Coordination instruction.** (1) If Senate Bill 283 is not passed and approved, including its provisions authorizing the deposit of interest earned on water development bond proceeds and renewable resource development bond proceeds in the water development state special revenue account and the renewable resource development account, respectively, section 1(2) and the bracketed material in section 4 are void.

(2) If Senate Bill 283 is not passed and approved, including its provisions authorizing the department to use for emergency grants, pursuant to 85-1-605, up to 10% of the funds available for grants from the water development state special revenue account, section 10 is void.

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved May 10, 1985.

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CHAPTER NO. 718

[HB 956]

AN ACT APPROPRIATING MONEY FROM THE JUNK VEHICLE STATE SPECIAL REVENUE FUND TO THE GENERAL FUND; AMENDING SECTION 75-10-532, MCA; AND PROVIDING AN EFFECTIVE DATE AND A PARTIAL TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $500,000 from the junk vehicle state special revenue fund to the general fund for the biennium ending June 30, 1987.

Section 2. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of moneys collected. *Except as otherwise provided in [section 1], all* moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, recycling, and disposal of junk vehicles and component parts."

Section 3. **Effective date — termination.** (1) This act is effective July 1, 1985.

(2) That portion of section 2 adding an exception clause to 75-10-532 terminates on July 1, 1987.

Approved May 10, 1985.

CHAPTER NO. 719

[SB 11€]

AN ACT REVISING THE PAY STRUCTURE FOR PROSECUTING ATTORNEYS; ADJUSTING THE SALARY OF PART-TIME COUNTY ATTORNEYS; REQUIRING THE STATE TO PAY ONE-HALF OF THE SALARY OF NO MORE THAN TWO AUTHORIZED DEPUTY COUNTY ATTORNEYS; PROVIDING LONGEVITY PAY FOR DEPUTY COUNTY ATTORNEYS; PROVIDING FUNDING BY IMPOSING A CHARGE ON PERSONS CONVICTED OF CRIMINAL OFFENSES OR WHO FORFEIT BOND OR BAIL; AMENDING SECTIONS 7-4-2502, 7-4-2503, AND 7-4-2505, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the purpose of this act is to maintain and improve the quality of the prosecution function in Montana by adjusting the salary of part-time county attorneys, requiring the state to pay one-half of the salary of two deputy county attorneys authorized by 7-4-2703, and providing longevity pay for deputy county attorneys; and

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WHEREAS, it is appropriate that necessary funding be derived from a charge to be assessed upon persons convicted of a crime or who forfeit bail or bond, thus providing that costs of maintaining and improving the quality of the prosecution function will be borne, in part, by those who necessitate the operation of the criminal justice system.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $10 in each misdemeanor case; and

(b) the greater of $20 or 10% of the fine levied in each felony case.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and may not be used in determining the jurisdiction of any court.

(4) The total of the charge imposed by this section and any fine assessed may not exceed the maximum fine authorized by law for the offense.

(5) The charges collected under subsection (1) must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a justice court or district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. On or before the 10th day of each month, the county finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case and the greater of $20 or 10% of the fine levied in each felony case. A county may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section. A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

Section 2. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

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(2) (a) The *salaries* of the county attorney *and deputy county attorneys authorized by 7-4-2703 are* payable monthly, with *the salaries of the county attorney and no more than two deputies payable* one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. *Such salaries for the deputy county attorneys include the longevity increases provided by 7-4-2503(3)(d).*

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney *or within 30 days after the appointment of a deputy county attorney authorized by 7-4-2703,* certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500. *In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.*

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(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to [the effective date of this act] must be included in the calculation of the longevity increase.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 4. Section 7-4-2505, MCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) assessor;

(e) county attorney;

(f) auditor.

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(2) (a) The salary of a deputy or an assistant listed in subsection (1), *other than a deputy county attorney,* may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving. *The salary of a deputy county attorney, including longevity payments provided in 7-4-2503(3)(d), may not exceed the salary of the county attorney under whom he is serving.*

(b) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder."

Section 5. **Effective date.** This act is effective July 1, 1985.

Section 6. **Nonseverability.** It is the intent of this legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid.

Approved May 13, 1985.

CHAPTER NO. 720

[HB 236]

AN ACT PROVIDING FOR LICENSING AND PLACEMENT OF ELECTRONIC VIDEO DRAW POKER MACHINES; PROVIDING FOR DISTRIBUTION AND APPROPRIATION OF REVENUE; PROVIDING A PENALTY PROVISION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 12] shall be known and may be cited as the "Video Draw Poker Machine Control Law of 1985".

Section 2. **Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Licensed establishment" means an establishment that is licensed to sell alcoholic beverages for consumption on the premises.

(3) "Licensee" means an individual, partnership, or corporation that has been issued a license by the department for the placement and operation of video draw poker machines in the licensed establishment of the individual, partnership, or corporation.

(4) "Used video draw poker machine" means a video draw poker machine, as that term is defined in this section, which is owned or possessed by an applicant on the day he applies for a license for the used

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machine and which was owned or operated in the state prior to February 3, 1984.

(5) "Video draw poker machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, as provided in [sections 1 through 12], utilizing a video display and microprocessors in which, by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.

Section 3. **Description and specifications.** Each video draw poker machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in [sections 1 through 12].

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game; and

(4) offer only the game of draw poker and have the following method of operation:

(a) the cards must be shuffled after each hand of poker is dealt;

(b) the game must have one memory location for each card in the deck. The deck must be shuffled by use of a random number generator to exchange each card in the deck with another randomly selected card.

(c) after shuffling, five cards must be dealt from the top of the deck;

(d) any discarded cards must be replaced by remaining cards in the deck, starting with the sixth card and using the cards in the order of the deck;

(e) after the first five cards of a hand have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, not to exceed eight quarters;

(f) the game must display the hands for which free games or credits will be awarded and the number of free games or credits for each hand;

(g) the machine must have doors to two locking areas, one area containing the logic board and software for the game draw poker and the other housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(h) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters;

(i) the machine must use a color display with images of cards that closely resemble standard poker playing cards;

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(j) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, the ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

(k) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(l) the machine must have nonresettable mechanical meters housed in the cash compartment that keep a permanent record of:

(i) coins accepted by each coin acceptor;

(ii) credits played by player;

(iii) credits won by player; and

(iv) credits printed out by the ticket voucher printer;

(m) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;

(ii) total credits, total credits played, and total credits won;

(iii) total hands of poker played and total hands of poker won;

(iv) total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush, or five of a kind;

(v) total errors from the logic board random access memory; and

(vi) total examination of electronic meters;

(n) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;

(o) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the license number of the machine;

(iv) the time of day, in hours and minutes in a 24-hour format;

(v) the date; and

(vi) the electronic meter readings required by subsection (4)(m).

Section 4. **Expected payback — verification.** The department shall prescribe the expected payback value of one credit played to be at least 80% of the value of a credit. Each machine must have an electronic accounting device that the department may use to verify the winning percentage.

Section 5. **Limitation on amount of money played and value of prizes.** A machine may not allow more than $2 to be played on a game or award free games or credits in excess of the value of $100 per hand.

Section 6. **Licensing by local governing bodies.** (1) Any city, town, or county governing body may issue to a person who meets the qualifications of [section 8] a license for each video draw poker machine to be used on the premises of a licensed establishment. A machine may be licensed by a city or town if located in the city or town or by the county if the machine is not located in a city or town.

(2) In addition to the license fee paid under [section 10], a governing body may charge an annual license fee for each license issued under this section. The license expires on June 30 of each year, and the fee must be prorated.

(3) Such license fee may not exceed $1,000.

Section 7. **Powers and duties of the department — licensing.** (1) The department shall administer the provisions of [sections 1 through 5 and 7 through 12].

(2) The department shall adopt rules implementing [sections 1 through 5 and 7 through 12] and, with respect to state licenses:

(a) provide licensing procedures;

(b) prescribe necessary application forms; and

(c) grant or deny license applications.

(3) The department may not deny or place a condition on a license except for reasonable cause.

(4) The department is a criminal justice agency, and designated employees are granted peace officer status with powers of search, seizure, and

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arrest to regulate and control those persons licensed under [sections 1 through 5 and 7 through 12].

Section 8. **State license qualifications — limitations — right to hearing.** (1) A person who has been granted a license under 16-4-401(2) to sell alcoholic beverages for consumption on the premises may be granted a license for the placement of video draw poker machines in his licensed establishment.

(2) A licensee may not have on the premises or make available for play on the premises of his licensed establishment more than five machines.

(3) A person denied a state license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

Section 9. **Video draw poker machines — possession — play — restriction.** No person may place an electronic video game machine that simulates or offers a game of poker in his licensed establishment unless he is licensed under [section 10]. Machines licensed under [section 10] are legal, and it is legal to play such machines, except that a person under the age of 18 years may not play a video draw poker machine. The provisions of Title 23, chapter 5, part 3, do not apply to or prohibit video draw poker machines or the playing of such machines.

Section 10. **State license — fee.** (1) The department of revenue, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under [section 7], shall issue to the licensee a license for each video draw poker machine.

(2) The department shall charge an annual license fee of $1,500 for each machine. The department shall retain 5% of the total license fee collected in fiscal years 1986 and 1987 and shall retain 3% thereafter for purposes of administering [sections 1 through 5 and 7 through 12 of this act]. The department shall deposit one-third of the remaining fee in the state general fund and forward two-thirds of the remaining fee to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from fees on licensed machines located in cities and towns. The license expires on June 30 of each year, and the fee is prorated. [The two-thirds portion of the annual fee is statutorily appropriated to the department as provided in [section 2 of House Bill No. 12] for deposit to the county or municipal treasury.]

Section 11. **Investigations and violations.** (1) The department shall make necessary investigations, suspend or revoke state licenses for violations of [sections 1 through 5 and 7 through 12], and hold hearings on such matters. A license may be suspended prior to a hearing upon a finding of danger to public health and welfare but may not be revoked until the hearing is completed.

(2) A violation of [sections 1 through 5 and 7 through 12] or a rule promulgated under [section 7] is a criminal offense, and a fine not to

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exceed $10,000 for the first violation and $15,000 for a subsequent violation must be imposed.

(3) If a video draw poker machine is operated in violation of [sections 1 through 5 and 7 through 12], it may be seized under 23-5-121 and the provisions of 23-5-122 apply.

(4) Employees of the department designated as enforcement agents may investigate the background of license applicants to the exteht judged necessary by the department, but no person may be investigated prior to his submission of an application for a license.

(5) Findings of suspected illegal activity must be reported to the appropriate law enforcement agency.

(6) Any peace officer of this state may arrest a person for tampering with a video draw poker machine, attempting or conspiring to manipulate the outcome or the payoff of a video draw poker machine, or manipulating the outcome or payoff of a video draw poker machine by physical tampering or other interference with the proper functioning of the machine.

Section 12. **Used video draw poker machines.** A used video draw poker machine may be licensed under [section 10] without meeting the requirements of [subsections (4)(j), (4)(k), and (4)(o) of section 3] if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine which was owned or operated in the state prior to February 3, 1984. A license issued under this section expires 1 year from the date of issuance or on July 1, 1987, whichever occurs first.

Section 13. **Appropriation.** The 5% portion of the license fees retained by the Department in fiscal years 1986 and 1987, as provided in [section 10 of this act] is appropriated to the Department for the biennium ending June 30, 1987, for purposes of administering this act.

Section 14. **Coordination instruction.** The bracketed language in section 10 of this act is effective only if House Bill No. 12 of the 49th Legislature is passed and approved. In addition, if House Bill No. 12 is passed and approved, a reference to section 10 of this act is included in the subsection of House Bill No. 12 listing all sections containing statutory appropriations.

Section 15. **Effective dates — termination date.** (1) This section and subsection (2) of section 7 are effective on passage and approval for the purpose of adoption of rules that are applicable on July 1, 1985.

(2) The remainder of this act is effective July 1, 1985.

(3) Section 12 terminates July 1, 1987.

Approved May 13, 1985.

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CHAPTER NO. 721

[HB 374]

AN ACT RAISING WINE TAX REVENUE ALLOCATED TO THE DEPARTMENT OF INSTITUTIONS FOR ALCOHOLISM PREVENTION AND TREATMENT PROGRAMS AND BEER TAX REVENUE ALLOCATED TO THE GENERAL FUND; AMENDING SECTIONS 16-1-408 AND 16-1-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of *$1.30* per barrel is levied and imposed as provided by 16-1-406, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. *One dollar of this* additional tax is to be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, *and 30 cents of this additional tax is to be deposited in the general fund.*"

Section 2. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine.** (1) A tax of *27* cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining *11* cents, *8.34 cents* to the state special revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism, *1 ⅓ cents* to the counties, based on population, for the purpose established in 16-1-404, and *1 ⅓ cents* to the cities and towns, based on population, for the purpose established in 16-1-405.

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(4) The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Section 3. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

CHAPTER NO. 722

[HB 410]

AN ACT TO REDUCE THE TAXABLE RATE APPLICABLE TO CERTAIN CLASS ELEVEN PROPERTY; AMENDING SECTION 15-6-141, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class eleven property — description — taxable percentage. (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five; and

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven.

(2) Class eleven property is taxed at 12% of market value *except as provided in 15-23-202 for railroad property.*"

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability date.** This act is applicable to taxable years beginning after December 31, 1985.

Approved May 13, 1985.

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CHAPTER NO. 723

[HB 567]

AN ACT REQUIRING LIFE AND DISABILITY INSURANCE COMPANIES TO SEND WRITTEN CANCELLATION NOTICES BEFORE CANCELING POLICIES FOR NONPAYMENT OF PREMIUMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notice required for cancellation.** No insurer may cancel a life insurance policy or annuity for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with the grace period required by 33-20-104.

Section 2. **Contents of notice — proof — limitation on recovery — exemptions.** (1) (a) The notice of cancellation shall state;

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its agent, the policy will lapse or be forfeited, except as to any nonforfeiture options provided for by a life insurance policy.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or agent of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from the due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) [Section 1] does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

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(c) policies upon which premiums are payable monthly or at more frequent intervals.

Section 3. **Notice required for cancellation.** No insurer may cancel a disability insurance policy for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last-known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with any grace period required by 33-22-206.

Section 4. **Contents of notice — proof — limitation on recovery — exemptions.** (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its agent, the policy will lapse or be forfeited.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or agent of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) [Section 3] does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

Section 5. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** (1) Sections 1 and 2 are intended to be codified as an integral part of Title 33, chapter 20, part 1, and the provisions of Title 33, chapter 20, apply to sections 1 and 2.

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(2) Sections 3 and 4 are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, apply to sections 3 and 4.

Approved May 13, 1985.

CHAPTER NO. 724

[HB 636]

AN ACT TO REDUCE THE TAX RATE ON PETROLEUM PRODUCED BY TERTIARY RECOVERY METHODS FROM 5 PERCENT TO 2.5 PERCENT; REQUIRING AMORTIZATION OVER 10 YEARS OF THE COSTS OF NECESSARY CHEMICAL SUPPLIES USED IN APPROVED TERTIARY RECOVERY PROJECTS; AMENDING SECTIONS 15-23-603 AND 15-36-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that it is essential to the continued growth in production and development of the petroleum resources of this state and to the continued prosperity and welfare of the people of this state that tertiary recovery operations be encouraged; and

WHEREAS, the Legislature further recognizes that tertiary recovery methods are experimental and more costly than traditional enhanced recovery operations, thus preventing recovery of oil in many fields because of economic infeasibility.

THEREFORE, it is the policy of the Legislature to provide an economic incentive to petroleum producers who invest in tertiary recovery projects enhancing Montana's crude oil production to the ultimate benefit of the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) *except as provided in subsections (1)(b) and (1)(c),* 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1981, and on or

before March 31, 1983; 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1983, and on or before March 31, 1985; and 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit thereafter; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas, *including carbon dioxide gas,* recycled or reinjected into the ground;

(c) 2.5% of the total gross value of the incremental petroleum and other mineral or crude oil produced from each lease or unit in a tertiary recovery project after [the effective date of this act]. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. Such approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For the purpose of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement;

(J) any other method approved by the department as a tertiary recovery method.

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(d) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(2) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If, in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot

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of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all moneys expended for necessary labor *and* machinery needed and used in the operation and development;

(c) except as provided in subsection (3), all moneys expended for necessary supplies needed and used in the operation and development;

(d) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(e) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(f) 70% of the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof.

(3) In calculating the deduction for moneys expended for necessary chemical supplies needed and used in a tertiary recovery project approved by the department of revenue, as provided in 15-36-101, the department shall require that the necessary chemical supplies, which include but are not limited to carbon dioxide supplies, be amortized over a 10-year period beginning with the year in which the moneys were expended."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

CHAPTER NO. 725

[HB 681]

AN ACT TO ALLOW RELEASE OF GENERAL INFORMATION PERTAINING TO A PATIENT'S CONDITION TO A LAW ENFORCEMENT OFFICER OR TO THE NEWS MEDIA BY A HEALTH CARE FACILITY; AMENDING SECTION 50-16-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-311, MCA, is amended to read:

"50-16-311. When consent is required to release or transfer confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules

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of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured;

(h) to a law enforcement officer about the general physical condition of a person being treated in a health care facility if such person was injured on a public roadway or was injured by the possible criminal act of another;

(i) to the news media about the general physical condition of an injured person being treated in a health care facility, provided the existence of the hospitalization is publicly known.

(3) For the purpose of this act, the term "general physical condition" is limited to a description of the condition as "satisfactory", "serious", or "critical"."

Approved May 13, 1985.

CHAPTER NO. 726

[HB 704]

AN ACT ALLOWING THE EXCLUSION OF THE TAXABLE VALUE OF PROPERTY UNDER A PROTEST PROCEEDING FROM THE TAXABLE VALUATION OF A COUNTY, MUNICIPALITY, AND SCHOOL DISTRICT FOR THE PURPOSE OF SETTING PROPERTY TAX LEVIES IF THE TAXABLE VALUE OF SUCH PROPERTY UNDER PROTEST EXCEEDS 5 PERCENT OF THE TAXING JURISDICTION'S TAXABLE VALUATION; PROVIDING THAT PAYMENT TO THE COUNTY, MUNICIPALITY, AND SCHOOL DISTRICT FROM THE PROTEST FUND ON SUCH PROPERTY MUST BE USED TO LOWER SUBSEQUENT TAX LEVIES; REQUESTING THE REVENUE OVERSIGHT COMMITTEE TO CONSIDER THE ADVISABILITY OF CREATING A STATEWIDE PROTEST FUND; AMENDING SECTIONS 7-6-2321, 7-6-4232, 15-10-202, AND 20-9-142, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2321, MCA, is amended to read:

"7-6-2321. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. *Except as provided in subsection (2), the* taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the county's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the county's taxable valuation in computing mill levies to fund the amounts necessary to be raised under the provisions of subsection (1) or fund amounts necessary under any other provision of law providing for a levy on the taxable valuation of the county or any district or portion thereof.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money must be used to reduce subsequent property tax levies of the appropriate funds or levies from which it was previously withheld in protest, except for statewide education and university mill levies. The county shall calculate such levies by

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crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue.

(3) The tax levy shall be made in the manner provided by 15-10-201."

Section 2. Section 7-6-4232, MCA, is amended to read:

"**7-6-4232. Fixing of tax levy.** (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. *Except as provided in subsections (2) and (4), the* taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201.

(4) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the city's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the city's taxable valuation in computing mill levies to fund the amounts necessary to be raised under the provisions of subsection (1).

(b) If tax money that was collected on property excluded under subsection (4)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies of the appropriate funds or levies from which it was previously withheld in protest. The city shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the city shall refund any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the city may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations

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of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Section 3. Section 20-9-142, MCA, is amended to read:

"20-9-142. Fixing and levying taxes by board of county commissioners. *(1)* On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district, *except as provided in subsection (2),* all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the district's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the district's taxable valuation in computing the mill levies to fund the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies. The district shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund on behalf of the district any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county treasurer may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Section 4. Section 15-10-202, MCA, is amended to read:

"15-10-202. Certification of taxable values and millage rates. *(1)* At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions, *and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and*

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if requested to do so by the county commissioners, the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

(2) The county commissioners shall inform the department of revenue in writing by July 15 as to whether the county wishes to exclude protested values from the tax base for the purpose of calculating certified mill levies. The decision of the county commissioners shall apply to all taxing jurisdictions within the county."

Section 5. **Revenue oversight committee consideration of advisability of statewide protest fund.** The revenue oversight committee is requested to consider the advisability of creating a statewide protest fund for taxes paid under protest and to suggest procedures for payment into the fund, administration of the fund, payment of litigation costs associated with protests based on state law, and satisfaction from the fund of judgments against taxing jurisdictions. If the revenue oversight committee accepts this request, it shall report its findings and recommendations and any proposed legislation to the 50th legislature.

Section 6. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

CHAPTER NO. 727

[HB 717]

AN ACT TO AMEND THE CHILD SUPPORT AND CUSTODY STATUTES; TO REQUIRE THE SUBMISSION TO THE COURT OF A PLAN IMPLEMENTING ANY CUSTODY AWARD; TO REQUIRE THE COURT TO STATE THE FACTORS AND REASONS IT CONSIDERED IN MAKING A CUSTODY AWARD AND IN NOT ORDERING CHILD SUPPORT TO BE PAID; AUTHORIZING THE COURT TO REQUIRE CONSULTATION WITH PROFESSIONALS IN FORMULATING OR IMPLEMENTING A CUSTODY PLAN OR ORDER; AMENDING SECTIONS 40-4-204, 40-4-223, AND 40-4-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support.** *(1)* In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(a) the financial resources of the child;

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(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational needs;

(e) the financial resources and needs of the noncustodial parent; and

(f) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702.

(2) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the reasons for not ordering child support."

Section 2. Section 40-4-223, MCA, is amended to read:

"40-4-223. Award of joint or separate custody. *(1)* In custody disputes involving both parents of a minor child, *the court shall award custody* according to the best interests of the child as set out in 40-4-212:

(a) to both parents jointly*; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or*

(b) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex.

(2) In making an award, the court shall require the submission of a plan for the implementation of the custody order.

(3) In making an award, the court shall state in its decision the reasons and factors considered in making the award."

Section 3. Section 40-4-224, MCA, is amended to read:

"40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall consider whether or not joint custody is in the best interests of a minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

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(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody."

Approved May 13, 1985.

CHAPTER NO. 728

[HB 739]

AN ACT TRANSFERRING THE ADMINISTRATION OF THE BOARD OF WATER WELL CONTRACTORS FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REDEFINING "WATER WELL CONTRACTOR" AND PROVIDING A DEFINITION OF "WATER WELL DRILLER"; PRESCRIBING ADDITIONAL DUTIES AND POWERS OF THE BOARD; REQUIRING THE ADOPTION OF WATER WELL CONSTRUCTION STANDARDS; REQUIRING A LICENSE FOR WATER WELL DRILLERS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 37-43-102, 37-43-202, AND 37-43-302 THROUGH 37-43-306, MCA; REPEALING SECTION 37-43-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water well contractors provided for in *[*2-15-1862*]*.

(2) "Department" means the department of *natural resources and conservation* provided for in Title 2, chapter 15, part *33*.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a natural person who *contracts on behalf of a firm, corporation, partnership, or other business entity to construct* a water well on lands other than his own for compensation.

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(5) "Water well driller" or "driller" means any person at a drilling site causing a water well to be drilled."

Section 2. Section 37-43-202, MCA, is amended to read:

"37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures by January 1, 1987. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guarantees; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board may request the department to inspect water wells drilled or being drilled, and the department has access to these at reasonable times.

(5) The board may establish a program for training water well drillers or prospective water well drillers and apprentices to more effectively carry out this chapter.

(6) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers and water well contractors.

(7) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(8) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the state special revenue fund for the use of the board.

(9) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors *and drillers* in this state;

(b) cause examinations to be made of applicants for licenses;

(c) *deny,* revoke, or suspend licenses for good cause, after notice and opportunity to be heard;

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(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

(10) The board shall pay to the department its share of the assessed costs of the department in administering this chapter."

Section 3. **Disciplinary authority — injunctions.** (1) The board may adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by the board must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) A board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

Section 4. Section 37-43-302, MCA, is amended to read:

"37-43-302. License required. *(1)* The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. *Except as provided in subsection (2), it* is unlawful for any contractor *or driller*, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for in this chapter.

(2) A license is not required for:

(a) a person who drills a water well on land that is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his residence and who obtains a permit from the board; or

(b) a person who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's

ownership interest in the property on which the well is to be drilled, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that the applicant intends to drill the well on land that he owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence."

Section 5. Section 37-43-303, MCA, is amended to read:

"37-43-303. Application — fee. (1) *Except as provided in 37-43-302(2), a* person desiring to engage in the drilling, making, or construction of one or more wells for underground water in this state shall first file an application with the department for a contractor's *or driller's* license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters."

Section 6. Section 37-43-304, MCA, is amended to read:

"37-43-304. Temporary license pending examination. A temporary water well contractor's *or driller's* license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in 37-43-305(1) and who has applied for a license under this chapter. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under 37-43-305. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation."

Section 7. Section 37-43-305, MCA, is amended to read:

"37-43-305. Examination and qualifications. (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

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(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of underground geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) the applicant must have completed a minimum of 1 year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 8. Section 37-43-306, MCA, is amended to read:

"**37-43-306. Bond to be required.** The department, on issuance of a *contractor's* license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the penal sum of $4,000, conditioned that the licensee will comply with the rules of the board."

Section 9. **Appropriation.** There is appropriated from the general fund to the Department of Natural Resources and Conservation for the biennium ending June 30, 1987, $13,000 to provide staff to assist the Board of Water Well Contractors in carrying out the provisions of this act.

Section 10. **Repealer.** Section 37-43-103, MCA, is repealed.

Section 11. **Extension of authority.** Any existing authority of the board of water well contractors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 12. **Codification instruction.** Section 2-15-1862 is intended to be renumbered and recodified as an integral part of Title 2, chapter 15, part 33.

Section 13. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

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CHAPTER NO. 729

[HB 826]

AN ACT ALLOWING A DEFINED RESORT COMMUNITY TO ESTABLISH A RESORT TAX AFTER A VOTE OF ITS ELECTORS; ESTABLISHING CATEGORIES OF GOODS AND SERVICES SUBJECT TO THE TAX; PROVIDING RESORT COMMUNITY PROPERTY TAX RELIEF; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, many municipalities in the State of Montana rely upon tourism for the bulk of their livelihood; and

WHEREAS, the tourist industry tends to be seasonally cyclical; and

WHEREAS, such cycles are reflected in demands for services and capital expenditures that do not occur for a community with a steady economy; and

WHEREAS, tourist income, tending to be spent for services and consumables originating in communities other than the resort community, is not translated into taxable real property; and

WHEREAS, the resort community must provide services not only for tourists but for its own residents, and those services are not commensurate with the taxable value of the resort community as compared with steady income municipalities of similar populations.

THEREFORE, it is the intent of this act to rectify this inequity by providing for a resort tax that may be locally enacted which would tax tourists to reimburse the resort community for the services provided to tourists.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort community" means a community that:

(a) is an incorporated municipality;

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(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community.

Section 2. **Taxing authority — specific delegation.** As required by 7-1-112, [this act] specifically delegates to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in [this act].

Section 3. **Limit on tax rate — goods and services subject to tax.** (1) The rate of the resort tax must be established by the election petition or resolution provided for in [section 4], but the rate may not exceed 3%.

(2) The resort tax is a tax on the retail value of all goods and services sold within the resort community by the following establishments:

(a) hotels, motels, and other lodging or camping facilities;

(b) restaurants, fast food stores, and other food service establishments;

(c) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and

(d) establishments that sell luxuries must collect a tax on such luxuries.

Section 4. **Election required — procedure.** (1) A resort community may not impose or, except as provided in [section 5], amend or repeal a resort tax unless the resort tax question has been submitted to the electorate of the resort community and approved by a majority of the electors voting on the question.

(2) The resort tax question may be presented to the electors of the resort community by:

(a) a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137; or

(b) a resolution of the governing body of the resort community.

(3) The petition or resolution referring the taxing question:

(a) must state the exact rate of the resort tax;

(b) must state the duration of the resort tax;

(c) must state the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) may specify the purposes that may be funded by the resort tax revenue.

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(4) Upon receipt of an adequate petition the governing body may:

(a) call a special election on the resort tax question; or

(b) have the resort tax question placed on the ballot at the next regularly scheduled election.

(5) The question of the imposition of a resort tax may not be placed before the electors more than once in any fiscal year.

Section 5. **Tax administration.** (1) Not less than 30 days prior to the date the resort tax becomes effective, the governing body of the resort community shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time thereafter as may be necessary to effectively administer the resort tax.

(2) The administrative ordinance shall specify:

(a) the times taxes collected by business are to be remitted to the resort community;

(b) the local government office, officer, or employee responsible for receiving and accounting for the resort tax receipts;

(c) the local government office, officer, or employee responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months imprisonment or both the fine and imprisonment;

(ii) civil penalties if the resort community prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the resort community in the action;

(iii) revocation of the offender's municipal business license; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(3) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with [section 3];

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the resort community 10 days prior to the collection due date established by the administrative ordinance; and

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(c) other administrative details necessary for the efficient and effective administration of the tax.

Section 6. **Use of tax revenues.** Unless otherwise restricted by the voter-approved tax authorization provided for in [section 4], a resort community may appropriate and expend revenues derived from a resort tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax.

Section 7. **Property tax relief.** (1) Annually anticipated receipts from the resort tax must be applied to reduce the municipal property tax levy for the fiscal year in an amount equal to at least 5% of the resort tax revenues derived during the preceding fiscal year.

(2) A resort community that received more resort tax revenues than had been included in the annual municipal budget shall establish a municipal property tax relief fund. All resort tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved May 13, 1985.

CHAPTER NO. 730

[HB 909]

AN ACT PROVIDING FOR THE ADMINISTRATION AND AWARDING OF GRANTS TO STATE GOVERNMENTAL UNITS FOR ENERGY CONSERVATION MEASURES; AMENDING SECTIONS 90-4-102, 90-4-104, AND 90-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-102, MCA, is amended to read:

"90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

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(3) "Person" means a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(4) "Department" means the Montana department of natural resources and conservation.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office thereof.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 2. Section 90-4-104, MCA, is amended to read:

"**90-4-104. General powers of department.** The department may:

(1) employ a staff adequate to administer this part;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications, granting, *administration, and repayment* of funds;

(4) adopt rules governing applications for and administration and awarding of loans;

(5) adopt rules governing the application for and administration and awarding of grants to state governmental units under [section 4];

(6) consider applications and award grants or loans, subject to the availability of funds and to the appropriation of such funds by the legislature, from the alternative energy and energy conservation research development and demonstration funds for projects that will further the purposes of this part;

(7) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy and energy conservation matters. The appointment of any such advisory committee shall be in keeping with 2-15-122."

Section 3. Section 90-4-106, MCA, is amended to read:

"**90-4-106. Criteria for grant or loan awards.** The department may award grants or loans to applicants under 90-4-105 in accordance with the following criteria:

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(1) A grant may cover a period exceeding 1 year, provided that all funds for the grant must be encumbered or accrued from the program appropriation for the year the grant is authorized.

(2) The department may give preference to projects which are also supported by funding from the federal government or other persons, provided the projects are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy and energy conservation research development and demonstration account for matching moneys in order to support more substantial research or commercialization.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants or loans to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources and energy conservation in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public.

(6) The department may expend or commit available alternative energy and energy conservation research development and demonstration funds. The department may commit funds for demonstration purposes only when in its judgment such expenditures or commitments have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:

(a) previous commitments of a similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the geographic location of the proposed demonstration project, *other than a project proposed for funding under [section 4]*;

(c) the proposed demonstration project would not further the purpose of this part."

Section 4. **State governmental unit grants.** (1) (a) Prior to July 1, 1987, the department may award grants from the alternative energy and energy conservation research development and demonstration account to state governmental units. These grants must be used to further the purposes of this part by providing money for state governmental units for energy conservation measures.

(b) State governmental units must apply to the department for grants.

(c) The department shall prescribe the form for applications and develop criteria for awarding grants under this section, including provisions requiring matching funds or repayment of grant funds to the alternative energy and energy conservation research development and demonstration account.

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(2) (a) After June 30, 1987, the department may award grants from the alternative energy and energy conservation development and demonstration account to such state governmental units that have had projects approved by the legislature.

(b) (i) State governmental units must apply to the department for grants.

(ii) The department shall prescribe the form for applications and develop criteria for prioritizing grants.

(iii) The department shall prioritize grant applications submitted to it and shall submit its recommendations on the granting of awards to state governmental units with its budget request as provided in 17-7-111. The recommendations must include the names of proposed projects, their cost, and the expected annual energy savings, if any, resulting from the grant.

(c) Each agency awarded a grant by the legislature under the provisions of subsection (2) will have its budget reduced commensurate with the estimated energy savings resulting from the grant.

Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 90, chapter 4, part 1, and the provisions of Title 90, chapter 4, part 1, apply to section 4.

Section 6. **Extension of authority.** Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved May 13, 1985.

CHAPTER NO. 731

[HB 924]

AN ACT CREATING RETAIL ALCOHOLIC BEVERAGES LICENSES IN EXCESS OF STATE QUOTA LIMITATIONS TO BE ISSUED TO TRIBAL ALCOHOLIC BEVERAGES LICENSEES DOING BUSINESS ON MONTANA INDIAN RESERVATIONS AND TO ENLISTED MEN'S, NONCOMMISSIONED OFFICERS', AND OFFICERS' CLUBS LOCATED ON STATE OR FEDERAL MILITARY RESERVATIONS; AMENDING SECTIONS 16-4-105, 16-4-201, AND 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

WHEREAS, on July 1, 1983, the United States Supreme Court rendered its opinion in the case entitled Rice, Director, Department of Alcoholic Beverage Control of California v. Rehner, and held that Congress had delegated authority to the states, as well as to Indian tribes, to regulate the use and distribution of alcoholic beverages in Indian country; and

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WHEREAS, the Montana Alcoholic Beverage Code limits the number of all-beverages licenses available in corporate city and county quota areas and the number of on-premises consumption retail beer licenses available in corporate city quota areas; and

WHEREAS, the enforcement of Montana's alcoholic beverages license quota creates a hardship on tribal alcoholic beverages licensees in quota areas where no state licenses are available; and

WHEREAS, the enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations in Montana have operated for many years as federal enclaves beyond the jurisdiction of state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, effective December 1, 1984, Air National Guard Regulation 215-2 requires enlisted men's, noncommissioned officers', and officers' clubs to comply with state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, the enforcement of Montana's alcoholic beverage license quota creates a hardship for enlisted men's, noncommissioned officers', and officers' clubs, which have historically operated as social clubs without profit motive and which do not have the economic capacity to compete for licenses.

THEREFORE, the Legislature of the State of Montana determines it appropriate to make available retail alcoholic beverages licenses in excess of state quota limitations to be issued to persons holding tribal alcoholic beverages licenses and doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exceptions to limit on retail beer licenses — tribal alcoholic beverages licensees and enlisted men's, noncommissioned officers', and officers' clubs.** (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on [the effective date of this act].

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries

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of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption.

Section 2. **Exceptions to limit on all-beverages licenses — tribal alcoholic beverages licensees and enlisted men's, noncommissioned officers', and officers' clubs.** (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on [the effective date of this act].

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but such license may only be transferred to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages licenses.

Section 3. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one retail beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

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(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, *and retail beer licenses issued under [section 1]*, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to *an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on [the effective date of this act] or to* a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

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(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 4. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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(3) Retail all-beverages licenses of issue on March 7, 1947, *and all-beverages licenses issued under [section 2]*, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to *an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on [the effective date of this act] or to* any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 5. Section 16-4-204, MCA, is amended to read:

"16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, *exclusive of those issued under [subsections (1)(a) and (1)(b) of section 2]*, did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, *exclusive of those issued under [subsections (1)(a) and (1)(b) of section 2]*, exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security

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and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under [subsection (1)(a) of section 2] may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverages licensee who holds an endorsement granted under this subsection (2) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval."

Section 6. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapters 1 through 6, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 16, chapter 4, part 2, and the provisions of Title 16, chapters 1 through 6, apply to section 2.

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Section 7. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date — applicability.** This act is effective on passage and approval and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on [the effective date of this act].

Approved May 13, 1985.

CHAPTER NO. 732

[HB 938]

AN ACT PROVIDING FOR ADMINISTRATION OF THE CULTURAL AND AESTHETIC GRANTS PROGRAM BY THE MONTANA ARTS COUNCIL; PROVIDING FOR GRANT CONDITIONS AND EXPENDITURES; AMENDING SECTIONS 22-2-303 AND 22-2-306, MCA; APPROPRIATING MONEY FOR CERTAIN PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Application procedure — grant criteria.** (1) As set forth in subsections (1)(a) and (1)(b), certain grants require local financial or in-kind support. The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project. In the following circumstances, local support is required:

(a) To receive cultural and aesthetic grant funds, county or municipally owned facilities must obtain financial and in-kind support from their respective local governments.

(b) To receive grant funding for all grants except the first grant from the cultural and aesthetic grant program, private museums, art centers, and cultural facilities must obtain county or municipal financial or in-kind support.

(2) An applicant for a historic preservation project must cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released.

Section 2. **Grant categories.** (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

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(b) operational support for cultural institutions that have been in existence for at least 2 years;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

(2) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least $3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(3) Challenge grants require a match of at least $3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match.

Section 3. Section 22-2-306, MCA, is amended to read:

"22-2-306. Grant conditions — additional funds — accounts and reports. (1) No grant may be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All *funds* granted to the grantee must be spent or encumbered during the grant period.

(4) *Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:*

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within such limitations, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an

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examination of the costs incurred by the project, total payment is appropriate.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and such other financial and descriptive reports as the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant."

Section 4. Section 22-2-303, MCA, is amended to read:

"**22-2-303. Rulemaking authority.** *(1)* The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.

(2) The Montana arts council shall adopt rules that implement the provisions of 22-2-306 and [sections 1 and 2], relating to local support, matching requirements, application procedures, and disbursements of grants."

Section 5. **Appropriation of cultural and aesthetic grant funds.** Except as otherwise provided in subsection (2)(b) of this section and notwithstanding any provision of 22-2-305 to the contrary, the Montana Arts Council shall allocate and disburse cultural and aesthetic project account funds as appropriated in this section as follows, with priority given to subsection (1), followed by subsections (2) through (4), respectively:

(1) If the funds in the cultural and aesthetic projects account were insufficient in the biennium ending June 30, 1985, to fund projects in the amount for which they were appropriated, the funds appropriated for such projects are reappropriated from such account until funds have been disbursed to fully cover such appropriations or until January 1, 1986, whichever occurs first.

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(2) (a) The following projects are approved and amounts appropriated to the Montana Arts Council for the biennium ending June 30, 1987, from the cultural and aesthetic projects account:

Project	Amount
Ad Hoc for MT Writer Anthology	$33,920
Archie Bray Foundation	8,000
Beall Park Art Center	15,000
Bozeman Women's History Group	15,773
Broadway 215, Incorporated	42,000
Butte-Silver Bow Arts Chateau	10,000
Carbon County Arts Guild	6,000
Carbon County Historical Society	7,690
Center for Public Vision	40,000
Copper Village Museum/Art Center	42,000
Culbertson Library Board	3,747
Custer County Art Center	13,620
Eastern Montana College Barstow Collection	14,770
Fort Peck Tribal Archives	24,680
Fort Peck Tribes	5,000
Fox Theater Corporation	50,000
Garfield County Museum	5,000
Garnet Preservation Association	20,000
Growth Thru Art	10,800
H. Earl Clack Museum	30,000
Havre-Hill County Library	42,000
Helena Civic Center	25,000
Helena Film Society	25,000
Hockaday Center for the Arts	42,000
Huntley Project Museum	5,000
Huntley Project Schools	1,000
KGLT-FM Corps of Discovery	8,968
KUFM Montana Gallery	21,965
Laurie Hill Library	3,000
Mineral County Museum	3,900
Montana Art Gallery Directors Association	35,000
Montana Arts Council Folklife	49,222
Montana Association of Symphony Orchestras	7,000
Montana Historical Society Oral History	79,294
Montana Performing Arts Consortium	20,930
Montana School of Creative Arts	13,300
Montana State University Fine Arts Gallery	30,000
Montana State University Play Creation	10,000
Paris Gibson Square	17,000
Polson City Library	1,000
Powell County Museum and Arts Foundation	32,000
Rattlesnake Productions	33,960
Renne Library	10,000
Reservation-Wide Education Committee	10,000
Rocky Boy Tribal High School	20,000
Shakespeare in the Parks	40,000

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St. Mary's Mission Preservation Trust	7,500
Stacey Historical, Cultural, and Memorial Hall	15,000
University of Montana Magic Movers	7,500
University of Montana Permanent Art Collection	30,000
University of Montana Repertory Theatre	82,400
Upper Musselshell Historical Society	2,000
Very Special Arts Montana	10,000
Vigilante Players	25,600
Watershed Foundation	25,000
Western Heritage Center	8,172
Yellowstone Art Center	42,000
Yellowstone Chamber Players	3,500
Young Audiences of Western Montana	15,000
Operating Expenses	33,300

(b) There is appropriated to the Department of Fish, Wildlife, and Parks from the cultural and aesthetic projects account $35,000 for the purpose of acquiring a building in Fort Benton to lease to the city of Fort Benton for an agricultural museum. This appropriation is contingent upon a match of $35,000 by the city of Fort Benton.

(3) The Montana Arts Council is appropriated an amount not to exceed $10,000 for project evaluations from any funds that revert from the projects subject to the appropriations in subsection (2). The evaluations must be done after July 1, 1986, for the purpose of preparing a report on such projects for the 50th Legislature.

(4) There is appropriated $16,643 to the oral history project of the Montana Historical Society and $9,778 to the folklife project of the Montana Arts Council from any funds that revert to the cultural and aesthetic projects account after the appropriations in subsections (2) and (3) have been fully funded. Sixty-three percent of the reverted funds must be disbursed to the oral history project, and 37% must be disbursed to the folklife project until both projects are fully funded.

Section 6. **Reversion of granted funds.** (1) On January 1, 1986, all project funds reappropriated from the 1985 biennium, but not disbursed, shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1987, any unencumbered balance of the 1987 biennium grants shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

Section 7. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 22, chapter 2, part 3, and the provisions of Title 22, chapter 2, part 3, apply to sections 1 and 2.

Section 8. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

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CHAPTER NO. 733

[HB 949]

AN ACT APPROPRIATING COAL BOARD MONEY TO THE FOUNDATION PROGRAM; AMENDING SECTION 90-6-205, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated to the state special revenue fund for state equalization aid, as defined in 20-9-343, $750,000 from any money in the local impact and education trust fund account established under 90-6-202 and available to the Coal Board for grants and loans under 90-6-206 for the fiscal year ending June 30, 1985.

(2) Money appropriated in subsection (1) is for use of the foundation program in the fiscal year beginning July 1, 1985, and is exempt from the provisions of 17-7-304.

Section 2. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account, *less the appropriation provided in [section 1]*, to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to

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give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

Section 3. **Effective date.** This act is effective on passage and approval.

Section 4. **Termination date.** Section 2 terminates July 1, 1986.

Approved May 13, 1985.

CHAPTER NO. 734

[HB 513]

AN ACT ESTABLISHING A STATE VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES ON CRITERIA FOR ESTABLISHING BURIAL ELIGIBILITY; AND PROVIDING AN APPROPRIATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State veterans' cemetery.** The department of military affairs shall establish a state veterans' cemetery. The cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana.

Section 2. **Rulemaking authority.** The department of military affairs shall adopt rules that provide criteria for determining which veterans may be buried in the state veterans' cemetery. The criteria must include, but are not limited to, discharge status and length of service.

Section 3. **Appropriation.** There is appropriated from the general fund for the 1986-87 biennium, $25,000 to the Department of Military Affairs for the purpose of establishing the State Veterans' Cemetery.

Approved May 13, 1985.

CHAPTER NO. 735

[SB 467]

AN ACT TO RATIFY THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fort Peck-Montana compact ratified.** The compact entered into by the state of Montana and the Assiniboine and Sioux tribes of the Fort Peck Indian reservation and filed with the secretary of state of

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the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

FORT PECK — MONTANA COMPACT

This Compact is entered into by and between THE STATE OF MONTANA and THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION (herein called the "Parties") and shall become effective as set forth hereinafter.

The Parties agree as follows:

ARTICLE I
GENERAL PURPOSES

The basic purposes of this Compact are to determine finally and forever all rights of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in the State of Montana to water on, under, adjacent to, or otherwise appurtenant to the Reservation, to settle existing disputes and remove causes of future controversy between the Tribes and the State and between Indians of the Fort Peck Reservation and other persons concerning waters of the Missouri River, its tributaries, and ground water, and to settle all claims by the Tribes and by the United States on behalf of the Tribes in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) and the pending adjudication in the state water court initiated pursuant to the provisions of Chapter 697, Laws of Montana 1979.

ARTICLE II
DEFINITIONS

For purposes of this Compact, and for no other purposes, the following definitions apply:

(1) "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

(2) "Annual" or "per year" means the calendar year commencing January 1 and ending December 31.

(3) "Board" means the Fort Peck-Montana Compact Board established by Article VI.

(4) "Conservation (carry-over) storage" is storage provided in a reservoir to capture and hold water that would otherwise go downstream. Such storage holds the water for beneficial use later in the season or is carried over to a subsequent season or seasons. Evaporation from the surface of such reservoir is considered to be a consumptive use to the extent that it exceeds the evaporative and transpirational losses which occurred in the reservoir area prior to its construction.

(5) "Consumptive use" means the amount of irrigation water that is transpired by vegetation, converted in the processes of photosynthesis and plant tissue growth, and evaporated from adjacent soils, water surfaces and

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foliage. For uses other than irrigation, consumptive use means the quantity of water diverted less the quantity of reusable return flow within the State.

(6) "Court of competent jurisdiction" means a state or federal district court which otherwise has jurisdiction of the subject matter and the parties, or a tribal court which otherwise has such jurisdiction provided that all parties to the case consent to tribal court jurisdiction.

(7) "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other structure or device, or the impoundment of water in a reservoir. Where a reservoir is constructed or operated on a stream, the annual diversion shall be the greater of:

(a) the inflow into the reservoir minus the outflow for releases or spills downstream from the reservoir, or

(b) withdrawals of water from the reservoir for actual use.

(8) "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(9) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(10) "Fort Peck Reservoir" means that body of surface water impounded by Fort Peck Dam, at the current spillway elevation.

(11) "Full service irrigation" means any form of irrigation that distributes water on a regularly scheduled basis in order to satisfy the full seasonal crop and soil water requirements.

(12) "Ground water" means any water located under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water. All other water shall be considered surface water.

(13) "Indian" means any person who:

(a) is an enrolled member of the Tribes; or

(b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(c) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(14) "Industrial" means the use of water for any uses that benefit an industrial enterprise including, but not limited to, industrial cooling, energy production, and evaporation associated with any industrial operation. Among the purposes excluded from the industrial use category are irrigation, stockwater, and domestic uses.

(15) "Instream flow" means that quantity of water scheduled to remain in a stream to maintain fish and wildlife resources.

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(16) "Missouri River" means the river formed by the confluence of the Gallatin, Jefferson and Madison Rivers in southwestern Montana, and flowing easterly beyond the eastern boundary of Montana.

(17) "Partial service irrigation" means the diversion of flood runoff from natural channels or water courses and spreading such water for the purpose of applying as much water as practicable to the land during periods of high stream flow to increase crop production.

(18) "Parties" means the Tribes and the State.

(19) "Person" means an individual or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(20) "Regulatory Storage" is storage provided as a part of a water distribution system for operational purposes. Evaporation loss from the distribution system itself is accounted for and is a part of the unit consumptive use rate established in this Compact and is therefore not considered to be a separate item of consumptive use.

(21) "Reservation" means the Fort Peck Indian Reservation as established in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(22) "Reusable" means capable of further beneficial use.

(23) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

(24) "Transfer" means any authorization for the delivery or use of water by a joint venture, service contract, lease, sale, exchange or other similar agreement.

(25) "Tribal Water Right" means the right to divert and use water as confirmed by Article III of this Compact.

(26) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, "Tribes" means the Tribal Chairman or the Chief Executive Official of the Tribes at the time.

(27) "Tributary" or "tributaries of the Missouri River that flow through or adjacent to the Reservation" means those tributaries of the Missouri River that traverse the Reservation, generally in a north to south direction, including:

(a) streams that form the east and west boundaries of the Reservation (Big Muddy Creek, Porcupine Creek and the Milk River);

(b) streams that originate outside the Reservation but empty into the Missouri River within the boundaries of the Reservation (the Poplar River and its tributaries);

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(c) streams that are wholly contained within the boundaries of the Reservation (Chelsea Creek, Tule Creek, Wolf Creek, Oswego Creek, and Little Porcupine Creek); and

(d) all other watercourses that traverse the Reservation.

(28) "Wasteful" means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility.

ARTICLE III
TRIBAL WATER RIGHT

A. General Statement of the Tribal Water Right. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have the right to divert annually from the Missouri River, certain of its tributaries, and ground water beneath the Reservation the lesser of (i) 1,050,472 acre-feet of water, or (ii) the quantity of water necessary to supply a consumptive use of 525,236 acre-feet per year for the uses and purposes set forth in this Compact with a priority date of May 1, 1888, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre-feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is further defined and limited as set forth in this Compact.

B. Persons Who May Use the Tribal Water Right. All uses of water authorized under any applicable law by the following persons shall be considered and calculated as uses of the Tribal Water Right:

1. the Tribes within or outside the Reservation;

2. all individual Indians using water within the Reservation including, but not limited to, Indians exercising uses established pursuant to state law prior to the effective date of this Compact;

3. all non-Indian successors-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest;

4. all other persons receiving water from the Fort Peck Irrigation Project including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact;

5. all other persons authorized to use water by the Tribes pursuant to this Compact, within or outside the Reservation;

6. the United States as trustee for the Tribes or any Indian including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact.

C. Measure of Consumptive Use for Irrigation. Irrigation usage of the Tribal Water Right shall be conclusively deemed to cause a consumptive use of 1.8 acre-feet per acre per year for full service irrigation and 0.48 acre-feet per acre per year for partial service irrigation. Any loss of water

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due to evaporation from reservoirs constructed in the future for conservation (carry-over) storage rather than for regulatory storage by the United States for the benefit of the Tribes or any Indian, or constructed for such conservation storage by the Tribes or by any Indian, shall be counted as a consumptive use.

D. Purposes for Which the Tribal Water Right May be Used. Within the Reservation, use of water in the exercise of the Tribal Water Right for any purpose may be authorized by the Tribes without regard to whether such use is beneficial as defined by valid state law. No use of the Tribal Water Right may be wasteful or inconsistent with the terms of this Compact. Outside the Reservation, any use of water in the exercise of the Tribal Water Right shall be beneficial as defined by valid state law on the date the Tribes give notice to the State of a proposed use outside the Reservation.

E. Facilities Diverting or Using the Tribal Water Right Outside the Reservation. All persons diverting or using the Tribal Water Right outside the Reservation, including the Tribes as sovereign, shall apply for all permits, certificates, variances and other authorizations required by valid state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water located outside the Reservation, and shall comply with all applicable provisions of this Compact. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained, and the diversion or use has not been found unlawful by a court of competent jurisdiction.

F. Amounts To Be Diverted from the Missouri River.

1. Diversions of water for use within or outside the Reservation may be made in the exercise of the Tribal Water Right from Fort Peck Reservoir and the mainstem of the Missouri River—but without utilization of the conservation (carry-over) storage of Fort Peck Reservoir—in the following amounts:

(a) during the months of November, December, January, February and March, not to exceed 40,000 acre-feet per month;

(b) during the months of April and October, not to exceed 50,000 acre-feet per month;

(c) during the months of May and September, not to exceed 105,000 acre-feet per month;

(d) during the month of June, not to exceed 145,000 acre-feet;

(e) during the month of July, not to exceed 215,000 acre-feet;

(f) during the month of August, not to exceed 180,000 acre-feet.

Provided that the aggregate of monthly diversions in the exercise of the Tribal Water Right from surface water shall not exceed 950,000 acre-feet per year, and the total annual consumptive use shall not exceed 475,000 acre-feet.

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2. The Tribes shall report the amount of all actual diversions from Fort Peck Reservoir and the mainstem of the Missouri River to the United States Army Corps of Engineers by April 1st of the calendar year following the year in which such diversions are made in accordance with paragraph 5 of section J of this Article.

3. All diversions authorized by paragraph 1 of this section may be made without payment to the United States, but the Tribes and any user of the Tribal Water Right shall otherwise comply with all generally applicable laws and regulations of the United States.

G. Export of the Tribal Water Right Outside the State. Use of the Tribal Water Right outside the State shall be in compliance with all valid provisions of state law in effect at the time of the proposed transfer that prohibit, regulate, condition, or permit the transportation of water outside the State.

H. Non-use of the Tribal Water Right not a Forfeiture. Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the right to such use.

I. Sources of Diversions of the Tribal Water Right. In the exercise of the Tribal Water Right water may be diverted:

1. Within the Reservation for use within the Reservation from:

(a) the mainstem of the Missouri River within or adjacent to the Reservation;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) any ground water source.

2. Outside the Reservation for use within the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) the mainstem of the Missouri River below Fort Peck Dam.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article.

3. Within or outside the Reservation for use outside the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, provided that water from these sources shall not be transported outside the respective watershed of each stream;

(c) the mainstem of the Missouri River below Fort Peck Dam; and

(d) the mainstem of the Missouri River above Fort Peck Reservoir.

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Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article. Diversions authorized by subparagraph (b) shall comply with paragraph 4 of section K of this Article. Diversions authorized by subparagraph (d) shall comply with paragraph 3 of section J of this Article.

J. Notice of and Conditions upon Diversions and Uses of the Tribal Water Right.

1. The Tribes shall give the State not less than 180 days advance written notice of any proposed diversion or use of the Tribal Water Right authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article and shall, in the case of any transfer of the Tribal Water Right, except agreements on the tributaries pursuant to paragraph 4 of section K of this Article, offer the State an opportunity to participate as provided in paragraph 2 of section K of this Article. Such notice shall include sufficient documentation to demonstrate that:

(a) the proposed use of water complies with section D of this Article;

(b) for diversions outside the Reservation, the proposed means of diversion and the construction and operation of the diversion works are adequate;

(c) the proposed use and diversion will not adversely affect, except with the consent of the owner of such right, any of the following rights to the use of water existing at that time:

(i) any water right arising under the laws of the United States;

(ii) any appropriative right to the use of water established pursuant to the laws of the State that has not been abandoned, but excluding any reservation of water made pursuant to the laws of the State which has not been put to actual beneficial use by the date notice is given;

(d) the proposed use does not cause any unreasonable significant adverse environmental impact; and

(e) proposed diversions in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

(i) substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

(ii) be made where low quality water which can economically be used is legally and physically available to the Tribes for the proposed use;

(iii) create or substantially contribute to saline seep; or

(iv) substantially injure fish or wildlife populations in the source of water from which the diversion is made.

The requirements of subparagraph (c) of this paragraph may be satisfied by a showing that the owner of such right has consented to the adverse effect. Subparagraph (c) shall not be construed to alter or avoid in any way the consequences resulting from such consent under state law.

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2. A proposed diversion or use of the Tribal Water Right outside the Reservation authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article may be challenged only:

(a) within 30 days after the expiration of the notice period provided in paragraph 1 of this section;

(b) in a court of competent jurisdiction; and

(c) by the State or by a person whose rights are adversely affected by the proposed diversion or use.

In any such case, the Tribes shall have the burden of going forward and the burden of proving by a preponderance of the evidence that they have satisfied the requirements of paragraph 1 of this section.

3. Diversions of water in the exercise of the Tribal Water Right outside the Reservation from the mainstem of the Missouri River above Fort Peck Reservoir, as authorized in subparagraph 3(d) of section I of this Article, may be made so long as the Tribes or any user of the Tribal Water Right:

(a) comply with all the laws of the State in effect at the time the diversion is proposed, including but not limited to state water use statutes;

(b) give not less than 180 days advance written notice of any proposed diversion in the manner required in paragraph 5 of this section:

(i) if the diversion is to be made from a reservoir, to the operator of the reservoir; or

(ii) if the diversion is not to be made from a reservoir, to the operator of the first dam, upstream and downstream, if any, from the point of diversion;

(c) obtain approval of the diversion from the State legislature.

4. For purposes of demonstrating compliance with subparagraph 1(c) and subparagraph 3(a) of this section and paragraph 6 of Section K of this Article, the portion of the Tribal Water Right to be diverted will be deemed an appropriative right which has:

(a) been acquired on May 1, 1888;

(b) a point of diversion and use where the water is actually being diverted and used or, if not actually being diverted, where the water would first flow on or adjacent to the Reservation;

(c) the existing use or, if not actually in use, an irrigation use provided, however, that the use can be transferred to a purpose other than irrigation without restriction as to period of use so long as the requirements of Section F of this Article are observed;

(d) the actual consumptive use or, if not actually in use or if being used for irrigation purposes, a consumptive use of 1.8 acre-feet per acre per year; and

(e) not been abandoned or forfeited.

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5. Any notice of a diversion required by paragraph 3 of this section and any report of a diversion required by paragraph 2 of section F of this Article shall specify:

(a) the person authorized to make the diversion;

(b) the amount of water proposed or authorized to be diverted annually;

(c) the amount proposed or authorized for annual consumptive use;

(d) the point of diversion;

(e) the period of use;

(f) the place of use; and

(g) the purposes for which the water may be used.

K. Transfers of the Tribal Water Right.

1. As an incident to and in the exercise of the Tribal Water Right, the Tribes may transfer within or outside the Reservation, as authorized by federal law and this Compact, the right to use water but may not permanently alienate such right or any part thereof. Any such transfer of water by the Tribes shall be subject to all provisions of this Compact.

2. Prior to making any transfer which authorizes use of water outside the Reservation to be diverted from the mainstem of the Missouri River, including Fort Peck Reservoir, the Tribes shall give not less than 180 days advance written notice to the State of the proposed terms and conditions of the transfer, and shall offer the State the opportunity to participate in the transfer as a substantially equal partner with the Tribes, assuming obligations and receiving benefits of the transfer under terms and conditions agreed to by the Parties. If the State does not accept the opportunity within the 180-day notice period, or if the State unreasonably delays the institution or completion of approval processes required by state law or unreasonably delays resolution of any litigation arising from its decision to accept the opportunity, the Tribes may proceed with the proposed transfer without State participation, provided that the proposed transfer shall be subject to all other provisions of this Compact. If the State does not accept the opportunity, or if State participation in the joint transfer is not approved, the State shall not later pursue the opportunity, except in accordance with all the terms of this Compact, including paragraph 3 of this section.

3. Prior to making any transfer allowing use or diversion of water from Fort Peck Reservoir or from the mainstem of the Missouri River below Fort Peck Dam, the State shall give not less than 180 days advance written notice to the Tribes of the proposed terms and conditions of the transfer and shall offer the Tribes the same opportunity to participate in the transfer as a substantially equal partner with the State, assuming obligations and receiving benefits of the transfer on terms and conditions agreed to by the Parties. If the Tribes do not accept the opportunity within the 180 day notice period, the State may proceed with the proposed transfer without the Tribes' participation, and the Tribes shall not later pursue the opportunity except in accordance with all the terms of this Compact, including paragraph 2 of this section.

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4. If otherwise authorized by federal law, the Tribes may enter into an agreement with any person who is exercising or proposing to exercise a right under the laws of the State to use surface water outside the Reservation on any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, which agreement allows such person's diversion and use and protects it from any other exercise of the Tribal Water Right provided, however, that:

(a) before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;

(b) subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;

(c) the amount of water subject to the agreement shall be considered a consumptive use of the Tribal Water Right;

(d) the agreement shall not permanently alienate the Tribal Water Right or any part thereof.

5. The Tribes may transfer annually only the following amounts of water for consumptive use outside the Reservation:

(a) 50,000 acre-feet;

(b) plus 35 percent of any amount over 200,000 acre-feet but less than 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State;

(c) plus 50 percent of any amount over 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State.

Transfers of the Tribal Water Right shall not be considered as part of any amounts authorized by state law to be transferred annually by the State.

6. In no event shall the Tribes be authorized to transfer less than 50,000 acre-feet of water per year outside the Reservation. The limits established in paragraph 5 of this section shall apply so long as the State is authorized to transfer annually at least 50,000 acre-feet of water pursuant to state law. If statutory authorization for the State to transfer water is not enacted, is repealed, or is held invalid, or if the amount of water authorized by state law to be transferred by the State is less than 50,000 acre-feet per year, then for any period in which the authorization or the limitation is not in force the Tribes may transfer water in accordance with all terms and conditions of this Compact other than paragraph 5 of this section. However, such transfers will be subject to any volume limitations provided by federal law or, in the absence of any federal volume limitations, the Tribes may transfer water in accordance with all terms and conditions in this Compact other than paragraph 5 of this section and with any volume limitations imposed by state law which would apply to a holder of a right to the use of water established pursuant to state law. For the purposes of complying with volume limitations imposed by state law, the Tribal Water Right will be deemed to have the characteristics set forth in paragraph 4 of section J of this Article.

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7. Unless authorized by federal law, the State shall not in any manner whatsoever tax any proceeds received by the Tribes as consideration for any transfer of the Tribal Water Right.

L. Instream Flows.

1. At any time within five years after the effective date of this Compact, the Tribes may establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams, excluding the mainstem of the Milk River, which are tributaries of the Missouri River that flow through or adjacent to the Reservation. These instream flows shall be a part of the Tribal Water Right with a priority date of May 1, 1888. Water remaining in a stream to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water.

2. Instream flows may be established by the Tribes only in accordance with this section. The Tribes may change the use of water for maintenance of instream flows to another purpose only with the consent of the State.

M. No Other Diversion or Use of the Tribal Water Right. No other diversion or use of the Tribal Water Right shall be made other than those authorized or recognized by this Article.

ARTICLE IV
PROTECTION OF USES UNDER STATE LAW

A. Uses Protected.

1. The following existing and proposed uses of water by Indians within the Reservation are protected and shall not be subordinated to any other uses by subsequent provisions of this Article:

(a) a maximum of 113 acres of irrigated land within the Wolf Creek watershed;

(b) a maximum of 11 acres of irrigated land within the Poplar River watershed;

(c) a maximum of 523 acres of irrigated land within the Big Muddy Creek watershed; and

(d) a maximum of 300 acres of land irrigated with ground water near the confluence of Porcupine Creek and the Milk River.

2. Uses of water by Indians within the Reservation for stockwatering purposes not in excess of 20 acre-feet per year for each impoundment and for all domestic uses are protected and shall not be subordinated to any other uses by subsequent provisions of this Article.

3. With the exception of the uses protected in paragraphs 1 and 2 of this section, diversion and use of water in the exercise of the Tribal Water Right except from the mainstem of the Missouri River, including water allocated to instream flow purposes, shall be subordinate to the following uses of water in the Porcupine Creek, Poplar River, Big Muddy Creek, Little Porcupine Creek, Wolf Creek, Tule Creek, and Chelsea Creek watersheds, including all tributary streams within those watersheds, and all

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underlying ground water whether or not hydrologically connected with the surface water:

(a) the beneficial uses of water with a priority date of December 31, 1984 or earlier established under the laws of the State and identified in Appendix A to this Compact;

(b) such rights of the United States Fish and Wildlife Service to the waters of Big Muddy Creek for the Medicine Lake National Wildlife Refuge as may be finally determined by the state water court;

(c) beneficial uses of water for domestic purposes;

(d) beneficial uses of water for stock watering purposes in existence prior to December 31, 1984, and beneficial uses of water for stock watering subsequent to that date not in excess of 20 acre-feet per year for each impoundment.

4. Except as to the rights protected in paragraph 3 of this section, the Tribal Water Right shall be prior to all rights to the use of surface and ground water established under the laws of the State with a priority date later than May 1, 1888.

B. Changes of Protected Uses.

1. The rights to the use of water protected by paragraph 3 of section A of this Article may be changed in accordance with state law as to point of diversion, period of use, place of use, purpose of use, or ownership of the right provided that:

(a) the proposed change will not adversely affect any use of the Tribal Water Right existing at the time of the proposed change;

(b) the amount of surface water flowing onto the Reservation within the Poplar River, the Big Muddy Creek, or the Porcupine Creek watersheds, will not be changed; and

(c) the source of the water will not be changed from surface to ground water, or from ground to surface water, or from one watershed to another.

2. Upon receiving an application for a proposed change authorized by paragraph 1 of this section, the State shall give the Tribes such advance written notice as is required by state law.

3. If an irrigation use is changed in any manner, or if a reservoir is constructed or operated which results in the consumptive use of water by evaporation, the following limitations apply:

(a) no more than 1.8 acre-feet of consumptive use per year may be authorized for each acre of land retired from full service irrigation; and

(b) no more than 0.48 acre-feet of consumptive use per year may be authorized for each acre of land retired from partial service irrigation;

(c) evaporation from any reservoir shall be charged as a consumptive use in accordance with definition 4 in Article II.

4. If an irrigation use is changed to an industrial use, all diversions and return flows shall be measured by a device acceptable to and subject to

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periodic inspection and testing by the State and the Tribes at the expense of the owner. The owner shall also have the quality of the return flows sampled and tested by a laboratory acceptable to the State and the Tribes as often as reasonably required by the State and the Tribes and at the expense of the owner.

ARTICLE V
ADMINISTRATION OF WATER RIGHTS

A. United States Administration. All rights to the use of water received from the Fort Peck Irrigation Project shall be administered by the United States, and the United States has the final and exclusive jurisdiction to resolve all disputes concerning uses of water received from the Fort Peck Irrigation Project subject to any judicial review provided by applicable law.

B. Tribal Administration.

1. The Tribal Water Right shall be administered by the Tribes, and the Tribes have the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right, except for disputes concerning uses of water received from the Fort Peck Irrigation Project and disputes involving users of the Tribal Water Right pursuant to agreements authorized in Article III, section K, paragraph 4.

2. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be adopted by the Tribes and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact by the Parties. Such code shall take effect 18 months after ratification of this Compact unless sooner disapproved by the Secretary of the Interior. Pending the adoption and approval of the tribal water code, administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior as trustee for the Tribes. The Tribes shall not administer the Tribal Water Right in a manner which denies any person a water right owned by that person which arises under the laws of the United States.

3. Within six months after the tribal water code takes effect or within six months after disapproval of the code by the Secretary, the Tribes or the Secretary of the Interior shall provide the State with notice of each existing use of the Tribal Water Right which shall show:

(a) the person authorized to make the diversion;

(b) the amount of water authorized to be diverted annually;

(c) the amount of water authorized for annual consumptive use;

(d) the point of diversion;

(e) the period of use;

(f) the place of use;

(g) the uses for which the water may be diverted; and

(h) the relative priority of the use as against other uses of the Tribal Water Right.

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4. The Tribes shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and ground water authorized by the Tribes during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year.

C. State Administration.

1. The State shall administer all rights to the use of surface water and ground water within or outside the Reservation which are not a part of the Tribal Water Right to the fullest extent allowed by law. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within two years after ratification of this Compact, the State shall notify the Tribes of all existing uses authorized by the State on the mainstem of the Missouri River below Fort Peck Dam and on all tributaries of the Missouri River that flow through or adjacent to the Reservation, except the mainstem of the Milk River. The State shall notify the Tribes within sixty days after the end of each quarter year of all new uses of surface and ground water permitted by the State on each of these sources during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. Notices required by this paragraph shall include the information required by paragraph 3 of section B of this Article.

3. No agency of the State shall administer any part of the Tribal Water Right. From and after the effective date of this Compact, unless the Tribal Water Right confirmed in Article III is fully utilized at the time application is made for a permit or other authorization, the State shall issue no permit or other authorization to divert or use water within the Reservation to the following persons:

(a) the Tribes;

(b) any Indian;

(c) any non-Indian successor-in-interest to any allottee on the Reservation by virtue of that person's assertion of a right arising under the laws of the United States; or

(d) the United States for the benefit of the Tribes or any Indian or any non-Indian successor-in-interest to any allottee.

D. Regulation of Ground Water.

1. With the exception of uses protected in Article IV, neither the State nor the Tribes shall authorize or continue the use of ground water without the consent of the other if such use will:

(a) result in degradation of instream flows established pursuant to section L of Article III; or

(b) contribute to the permanent depletion or the significant degradation of the quality of a ground water source which in whole or in part underlies the Reservation.

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2. With the exception of uses protected in Article IV, the State shall not, without the Tribes' consent, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the Tribes. The Tribes shall not, without the consent of the State, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the State and protected by Article IV of this Compact.

ARTICLE VI
FORT PECK-MONTANA COMPACT BOARD

A. Board established. There is hereby established the Fort Peck-Montana Compact Board, which shall exercise powers and responsibilities as set forth in this Article.

B. Membership.

1. The Board shall consist of three members. One member shall be appointed by the Governor of the State of Montana or, in lieu of such appointment, shall be the Governor. The salary and expenses of that member shall be paid by the State. One member shall be appointed by the Chairman of the Tribes, or in lieu of such appointment, shall be the Tribal Chairman. The salary and expenses of that member shall be paid by the Tribes. The third member shall be selected by agreement of the other two members. The salary and expenses of that member and all other expenses of the Board shall be shared equally by the State and the Tribes subject to the availability of funds. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected. The initial term of each member shall be staggered, with one member serving a six-year term, one a four-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure and agreed upon in writing by the first three members of the Board. If the Governor or the Tribal Chairman serves on the Board, such person shall not serve on the Board beyond his or her term as Governor or Tribal Chairman.

2. Should the two appointed members fail to agree within sixty days of the effective date of this Compact or within thirty days after any vacancy occurs, on the selection of the third member, the following procedure shall be utilized:

(a) within five days each member shall nominate no more than five and no less than three persons to serve as a member of the Board;

(b) within fifteen days thereafter each member shall reject all but one of the persons nominated by the other member;

(c) the chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

3. Vacancies on the board shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If

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the member appointed by the Governor becomes unable or unwilling to serve on the Board, the Governor shall make the appointment within fifteen days. If the member appointed by the Tribal Chairman becomes unable or unwilling to serve, the Tribal Chairman shall make the appointment within fifteen days. If the third member of the Board becomes unable or unwilling to serve on the Board, the remaining members shall fill the vacancy under the procedure set forth in paragraphs 1 and 2 of this section.

C. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. Meetings may be in person or, in appropriate circumstances, by telephone. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be delivered to all parties in the proceeding before the Board, and to both Parties to this Compact.

D. Jurisdiction of the Board. The Board shall have exclusive jurisdiction, only as provided in this Compact, to resolve any controversy over the use of ground water to which this Compact pertains, any controversy over the use of surface water within the Reservation or from any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, and any controversy as to the meaning of this Compact between: (i) on the one hand, the Tribes or any person or persons claiming a right to use the Tribal Water Right; and (ii) on the other hand, the State or any person or persons claiming a right to use water under the laws of the State.

E. Powers and Duties of the Board.

1. The Board shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The courts of the Tribes and the State shall enforce any subpoena issued by the Board in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued in a civil action by courts of the Tribes and the State.

2. The Board shall hold hearings in proceedings before it and shall give advance notice to the Tribes, the State and all parties to any proceeding personally or by registered mail not less than five days before any hearing. Appearance at a hearing waives such notice. The Board may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Tribes, the State and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense.

3. The Board may enter an order after hearing granting any party to the dispute before it temporary or preliminary injunctive relief, or any other relief which the Board deems appropriate except money damages. The Board or any party to a proceeding before the Board may invoke the jurisdiction of a court of competent jurisdiction to enforce any temporary or preliminary injunction so issued by the Board by filing a petition for

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enforcement naming the enjoined person as respondent. Upon filing the petition, the court shall enter any order it deems appropriate for enforcement of the injunction ordered by the Board, including but not limited to injunctive relief on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party. The United States, the State, and the Tribes shall not be required to post any bond. The court may appoint a water commissioner or master to monitor compliance with such relief.

4. The Board shall adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Compact. Such rules and regulations must be consistent with all provisions of this Compact. All records of the Board shall be open to public inspection except for privileged information.

5. The Board may employ or seek assistance of such clerical or other personnel and may establish such offices as it deems necessary for the performance of its functions according to this Compact. Pending the establishment of a principal office, the Board's office shall be located at Fort Peck Agency of the Bureau of Indian Affairs.

6. The annual budget of the Board shall be subject to approval of the Parties to this Compact and to the availability of funds appropriated by the Parties.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. On application of a party within a reasonable time, but in any event no more than ninety days after a decision is rendered, the Board may modify or correct any decision:

(a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision;

(b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or

(c) where the decision requires clarification.

2. Any party before the Board may, within ten days of any final decision, apply to the Board to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by registered mail upon all parties to the proceeding. Any other party shall have ten days within which to respond to the application. The Board shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the Board fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.

3. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribes, the State and all parties to the

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proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

4. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

(a) the decision is not supported by substantial evidence;

(b) the decision was procured by corruption, fraud or undue means;

(c) there was evident partiality or corruption by the Board or by any member;

(d) the Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

(e) the Board exceeded its authority under the terms of this Compact; or

(f) the decision is contrary to law.

5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribes, the State or any party before the Board in the proceeding in which the decision was made.

6. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, may order such temporary or permanent relief as it considers just and proper.

7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the court in a civil action.

8. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, to permit the appeal or judicial enforcement of Board decisions as provided in this Compact, except that such waivers shall not extend to any action for money damages including costs and attorneys' fees as a result of such judicial action.

ARTICLE VII
FINALITY AND EFFECTIVENESS OF COMPACT

A. Ratification. This Compact shall become effective as to both parties when ratified by the Legislature of the State of Montana and the Fort Peck

Tribal Executive Board and approved by the United States Departments of Justice and the Interior. Ratification by the State and by the Tribes is irrevocable, and this Compact may not be modified in any manner whatsoever except with the joint consent of the legislative body of both Parties.

B. Incorporation into Decrees and Disposition of Federal Suits.

1. The Parties and the United States shall petition for incorporation of this Compact into the preliminary decrees and final decrees in any state water court proceedings to adjudicate any right to the use of water to which this Compact pertains, and this Compact may not be modified in any manner whatsoever without the consent of both Parties as provided in section A of this Article. The United States shall not be bound by provisions of this Compact until it is incorporated into the final decree, as provided in this section.

2. This Compact shall only be filed as a proposed consent decree in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), or United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) if there is a final determination by the state courts that they lack jurisdiction over, or that the state proceedings are inadequate to adjudicate, some or all of the water rights asserted in either of the above cases. Upon a final determination that the state courts have jurisdiction over, and that the state proceedings are adequate to adjudicate all of the water rights in the above cases, the United States and the Parties will immediately execute a joint motion pursuant to Rule 41(a) of the Federal Rules of Civil Procedure to dismiss with prejudice and on their merits all claims by the Tribes and the United States on behalf of the Tribes in the pending cases.

ARTICLE VIII
DISCLAIMERS AND RESERVATION OF RIGHTS

A. Disclaimers. Nothing in this Compact shall be so construed or interpreted:

1. to establish the nature, extent, transferability, or manner of enforcement of water rights of any Indian reservation other than the Fort Peck Indian Reservation;

2. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian outside the Reservation by purchase of such right or by purchase of land, or by application to the State;

3. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian within the Reservation:

(a) by purchase of such right or by purchase of land, provided that water rights acquired by such purchase after ratification of this Compact shall be deemed to be an exercise of the Tribal Water Right; or

(b) by application to the State, provided that the Tribal Water Right confirmed in Article III has been fully utilized at the time an application is made;

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4. to determine the relative rights inter sese of persons using water under the authority of the State or the Tribes;

5. to limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

6. to authorize the taking of a water right which is vested under state or federal law;

7. to create or deny substantive rights through headings or captions used in this Compact; or

8. to address or prejudge whether, in any interstate apportionment of the waters of the Missouri River Basin, the Tribal Water Right shall be counted as a part of the waters apportioned to the State.

B. Reservation of Rights. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

ARTICLE IX
TRIBAL RELINQUISHMENT OF OTHER WATER CLAIMS

The Tribal Water Right confirmed in Article III shall be final and conclusive. With the exception of the Tribal Water Right recognized herein and rights established under state law as authorized by this Compact, the Tribes and the United States as trustee for the Tribes hereby relinquish forever any and all existing and future claims to water from any source and for any purpose. This relinquishment includes, but is not limited to, any claim for water derived from: aboriginal use of land or water; any Indian treaties; any act of Congress; and any executive act of the United States.

ARTICLE X
BINDING EFFECT

A. Persons Bound. Upon the effectiveness of this Compact, its terms will be binding:

1. upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification, or authorization is to be determined by Montana law; and

2. upon the Tribes and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, or any right arising under tribal law, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification or authorization is to be determined by Tribal law. Notwithstanding any other provision of law, the Tribal Water Right confirmed in Article III of the Fort Peck-Montana Compact includes conclusively and forever the water rights arising under the laws of the United States of all persons on the Fort Peck Reservation by virtue of the ownership or purchase of any Indian allotment, and the courts of the State

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shall not have jurisdiction to adjudicate or decree any such right claimed by any such person.

B. Effect on Other Laws. The provisions of the Fort Peck-Montana Compact shall supersede any present or future enactment or common law rule inconsistent with such Compact including but not limited to Montana Code Annotated 28-2-708.

ARTICLE XI
SEVERABILITY

Should any part of this Compact other than Articles III, IV, VII, or IX be held to be invalid, all other parts thereof shall continue to be in full force and effect. Should any part of Articles III, IV, VII, or IX be held invalid, either party may withdraw from the remaining provisions of this Compact by action of its legislative body taken within one year from the determination of such invalidity.

ARTICLE XII
LEGISLATION

A. Future legislation. The parties agree to seek enactment of further legislation if it becomes necessary to effectuate the provisions and purposes of this Compact, and to protect such provisions and purposes from challenge and attack, provided that no provisions of the Compact shall be modified as to substance except as provided in Article VII.

B. Petition to Congress.

1. The Parties hereby request the Montana legislature to petition Congress to enact the following legislation in substantially the following form:

"Sec. 2. For purposes of this Act, the term:

(a) "Fort Peck-Montana Compact" means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation ratified by the legislature of the State of Montana on _____, 1985 and by the Tribes on _____, 1985.

(b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(c) "Secretary" means the Secretary of the Interior.

(d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

"Sec. 3.

"(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort Peck-Montana Compact for a specified term, not to exceed fifty

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years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

"(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361. Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

2. The provisions of this Compact shall have no force and effect until the resolution set forth in paragraph 1 of this section is approved by the Montana Legislature and submitted to Congress.

IN WITNESS WHEREOF the representatives of the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have signed this Compact in five original counterparts on the .... day of ....., 1985.

For the Assiniboine and Sioux
Tribes of the Fort Peck Indian Reservation

.....
Walter Clark

.....
Norman Hollow

.....
Caleb Shields

For the State of Montana
Montana Reserved Water Rights Compact Commission

.....	.....
W. Gordon McOmber, Chairman	Daniel O. Kemmis
.....	.....
Jack E. Galt, Vice Chairman	A.B. Linford
	.....
	Joseph P. Mazurek
.....	.....
William M. Day	Audrey G. Roth
.....	.....
Everett C. Elliott	Chris D. Tweeten

APPROVED:

For the Secretary of the Interior

.....

For the Attorney General of the
United States

.....

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 15, 1985.

CHAPTER NO. 736

[HB 701]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE, AFTER CONSULTATION WITH THE REVENUE OVERSIGHT COMMITTEE AND APPROVAL BY THE LEGISLATURE, TO ACCEPT IN-KIND PAYMENTS OF CERTAIN INHERITANCE AND ESTATE TAXES WITH OBJECTS, SITES, OR ITEMS OF UNIQUE HISTORICAL AND CULTURAL SIGNIFICANCE OR WITH INTERESTS IN REAL PROPERTY HAVING CONSERVATION, RECREATION, OR WILDLIFE PRESERVATION VALUE; APPROVING ACCEPTANCE BY THE DEPARTMENT OF IN-KIND PAYMENT OF THE DALY MANSION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Intent.** It is the intent of [this act] to allow the payment of inheritance and estate taxes by the transfer to the state of unique objects of significant historical or artistic interest, extremely unique sites or buildings of historical interest, and easements and other recognized interests in land to conserve unique open space and to preserve wildlife habitat, park, recreational, historic, aesthetic, cultural, and natural values on or related to land, while limiting the impact of such transfers on the revenue collected under this chapter. It is the intent of [this act] to allow in-kind payment for a short period of time to evaluate the impact of [this act] on revenue, to evaluate the types of in-kind payments which are recommended by the department of revenue, and to evaluate the ability of receiving entities to manage the in-kind payments. It is not the intent of [this act] to create a right in any donor to pay estate or inheritance taxes with an in-kind payment.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Donor" means the personal representative, administrator, joint tenant, heir, legatee, devisee, trustee, tenant in common, conservator, person interested in the estate or trust, or any person responsible for the payment of inheritance or estate taxes to the state.

(2) "In-kind payment" means a payment of inheritance or estate taxes or a portion thereof by the transfer to the state of personal property, real property, or an interest in real property as defined in Title 70, chapters 15 and 17.

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(3) "Interest in real property having recreational, conservation, or wildlife value" means any interest in real property recognized in Title 70, chapters 15 and 17, that, in the opinion of the receiving entity, is of unique value as a scenic, historic, archaeologic, scientific, or recreational resource to the state and which will contribute to the cultural, recreational, or economic life of the people and their health or is unique and critical habitat for wildlife in the state.

(4) "Object of significant artistic merit" means any object of art, a collection of records or minerals, or a painting, engraving, relic, coin, furniture, or fixture which in the opinion of the receiving entity is of unique and peculiar artistic value and of historical significance to Montana.

(5) "Receiving entity" means the Montana historical society or the department of fish, wildlife, and parks.

(6) "Site of significant historical interest" means any building, fixture, real property, or any combination thereof that in the opinion of the receiving entity is of unique and peculiar historical significance to Montana.

(7) "Value of in-kind payment" means the value of an object of significant artistic merit, a site of significant historical interest, or an interest in real property having recreational, conservation, or wildlife value reflecting its intrinsic value to Montana and the public as determined by a certified appraiser selected by the receiving entity.

Section 3. **Application for in-kind payment — in-kind review committee — review process.** (1) Upon written application from a receiving entity, the department of revenue shall notify the revenue oversight committee that such an application has been received.

(2) Upon receipt of such notification, the revenue oversight committee shall appoint an in-kind review committee. The in-kind review committee must be comprised of the following persons, appointed by the revenue oversight committee:

(a) a representative of the receiving entity; and

(b) six members representing the county in which the property proposed for in-kind payment lies or was situated at the time of death of the person whom the donor represents, as follows:

(i) one member of the county commission;

(ii) one state senator;

(iii) one state representative; and

(iv) three residents from the community at large.

(3) The in-kind review committee is a voluntary review committee and is entitled to no compensation or reimbursement of expenses for its review, recommendation, or any other activity.

(4) The in-kind review committee will advise the department and the revenue oversight committee as to the following:

(a) proposed and potential uses of the property;

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(b) where applicable, methods and potential sources for rehabilitation, maintenance, and general support of the property alternative to the statement submitted by the receiving entity pursuant to [section 4].

(5) Upon completion of its review, the in-kind review committee shall submit a report in written form to the revenue oversight committee and the department, which must be considered in determining whether to recommend that the legislature approve the in-kind payment.

(6) The in-kind review committee has 180 days from the date written application is received by the department from the receiving entity within which to make its report.

(7) The department shall, as provided in 72-16-438, defer payment of inheritance or estate tax that is under review for in-kind payment, so that the tax due is exempt from the interest penalty imposed under 72-16-441.

Section 4. **Receipt of in-kind property for payment of taxes — limitations.** (1) Upon receipt of the written application of a receiving entity and the report, if any, of the in-kind review committee, the department of revenue, after consultation with the revenue oversight committee, may recommend that the legislature approve acceptance by the department as in-kind payment of all or a portion of estate or inheritance taxes property consisting of any object of significant artistic merit, any site of significant historical interest, or any interest in real property having recreational, conservation, or wildlife value.

(2) A written application pursuant to subsection (1) must be accompanied by a statement from the receiving entity concerning the methods available for the maintenance, supervision, and care of the object, site, or interest in real property.

(3) The department may accept an in-kind payment if:

(a) the total estate and inheritance taxes due exceed $100,000;

(b) the value of the in-kind payment does not exceed $400,000; and

(c) it has received the approval of the legislature.

Section 5. **Valuation of in-kind payment.** The receiving entity shall certify the value of the in-kind payment to the department of revenue and provide such documentation or other evidence of the value of the in-kind payment as the department may require.

Section 6. **Receipts of in-kind payments.** Title or possession of the in-kind payment must be taken in the name of the state of Montana by the receiving entity. The receiving entity shall promptly notify the department of revenue and the revenue oversight committee of the receipt of the in-kind payment and the proper recording of any interest in real property. Upon such notification, the department shall notify the county treasurer and state treasurer of the in-kind payment. The in-kind payment must be recorded and credited as if money had been received for payment of the inheritance or estate tax.

Section 7. **Approval of Daly mansion for in-kind payment.** The department of revenue is authorized to receive in-kind payment of the Daly

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mansion for a portion of the estate and inheritance taxes due the state in the matter of the Bessenyey estate, if:

(1) the total estate and inheritance taxes due exceed $100,000; and

(2) the value of the in-kind payment does not exceed $400,000.

Section 8. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to all estates, trusts, and terminations of joint tenancies that have not completed probate or paid Montana inheritance or estate taxes as of the effective date of this act.

Section 9. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 72, chapter 16.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved May 15, 1985.

CHAPTER NO. 737

[HB 667]

AN ACT PERMITTING A YOUTH ALLEGED TO BE A DELINQUENT YOUTH TO BE DETAINED AT MOUNTAIN VIEW SCHOOL; REQUIRING THE COUNTY OF THE YOUTH'S RESIDENCE TO PAY CERTAIN EXPENSES RESULTING FROM THE DETENTION; APPROPRIATING FUNDS TO THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 41-5-207, 41-5-306, AND 53-30-202, MCA; PROVIDING A TERMINATION DATE; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-207, MCA, is amended to read:

"41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court;

(5) cost of transcripts and printing briefs on appeal*; and*

(6) cost of detention as provided for in 41-5-306(4)."

Section 2. Section 41-5-306, MCA, is amended to read:

"**41-5-306. Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth *alleged to be a delinquent youth* may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) (a) A youth alleged to be a delinquent youth may be detained at Mountain View school as provided in 53-30-202. The superintendent of the school must be notified before a youth is transported to the school for detention. The county of the youth's residence shall:

(i) pay the cost of transporting the youth to and from the school;

(ii) pay medical costs incurred by the youth during detention; and

(iii) reimburse the state general fund for the per diem cost of detention. The department of institutions, at the beginning of each fiscal year, shall determine the per diem rate by dividing the additional budgeted daily cost of providing detention services by the anticipated average daily detention population.

(b) Counties receiving detention services will be billed monthly for services provided the preceding month, and may be refused further services if bills are not paid within 60 days of receipt of statement.

(c) The county shall pay the costs provided for in subsection (4)(a) from the county's district court fund.

(5) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained

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in a jail or other facility intended or used for the detention of adults charged with criminal offenses."

Section 3. Section 53-30-202, MCA, is amended to read:

"53-30-202. Establishment of juvenile correctional facilities — use of Mountain View school to include detention. *(1)* The department of institutions, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp.

(2) Mountain View school may be used at any one time for the detention of no more than five male and three female youths under the age of 18 who are alleged to be delinquent youths. The superintendent shall establish a procedure to assure that this capacity for detention is not exceeded. Youths detained at the school are entitled to the educational and ancillary services normally provided to students at the school, subject to security provisions."

Section 4. **Appropriation.** (1) There is appropriated $63,200 from the general fund to the Department of Institutions for the fiscal years ending July 1, 1985, and July 1, 1986, for the building modifications at Mountain View School required to implement this act.

(2) There is appropriated $187,777 from the general fund to the Department of Institutions for the biennium ending July 1, 1987, for the operational expenses to implement this act.

Section 5. **Termination date.** This act terminates July 1, 1987.

Section 6. **Effective dates.** (1) Section 4(1) and this section are effective on passage and approval.

(2) Section 4(2) is effective July 1, 1985.

(3) Sections 1 through 3 and 5 are effective October 1, 1985.

Approved May 15, 1985.

CHAPTER NO. 738

[HB 211]

AN ACT TO INCREASE THE MAXIMUM GENERAL FUND BUDGET SCHEDULES FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS BY 4 PERCENT FOR SCHOOL FISCAL YEAR 1985-86 AND BY 4 PERCENT FOR SCHOOL FISCAL YEAR 1986-87; AMENDING SECTIONS 20-9-316 THROUGH 20-9-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1985-86. (1) For each elementary school having an ANB of nine or fewer

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pupils, the maximum shall be *$19,959* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$19,959* plus *$834.10* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be *$32,714* plus *$834.10* per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$27,466* plus *$834.10* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$43,851* plus *$522.40* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,938* shall be decreased at the rate of *$1.88* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,825* shall be decreased at the rate of *$1.72* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,481* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

"20-9-317. High school maximum budget schedule for 1985-86. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$113,708*.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$4,738* shall be decreased at the rate of *$25.84* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$4,324* shall be decreased at the rate of *$25.84* for each additional pupil until the ANB shall have reached 100 pupils.

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(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,774* shall be decreased at the rate of *$4.32* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,342* shall be decreased by *$2.38* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$2,104* shall be decreased at the rate of *44* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,973* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 3. Section 20-9-318, MCA, is amended to read:

"20-9-318. Elementary school maximum budget schedule for 1986-87 and succeeding years. For *1986-87* and succeeding school years, the elementary school maximum budget schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$20,757* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$20,757* plus *$867.50* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be *$34,023* plus *$867.50* per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$28,565* plus *$867.50* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$45,605* plus *$543.30* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$2,015* shall be decreased at the rate of *$1.96* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

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(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,898* shall be decreased at the rate of *$1.79* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,540* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

"20-9-319. High school maximum budget schedule for 1986-87 and succeeding years. For *1986-87* and succeeding school years, the high school maximum budget schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$118,256.*

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$4,927* shall be decreased at the rate of *$26.87* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$4,497* shall be decreased at the rate of *$26.87* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,885* shall be decreased at the rate of *$4.50* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,435* shall be decreased by *$2.47* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$2,188* shall be decreased at the rate of *45* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$2,052* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved May 15, 1985.

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CHAPTER NO. 739

[HB 198]

AN ACT TO ALLOW ZERO PERCENT INCREASE IN THE STATEWIDE TAXABLE VALUE OF PROPERTY IN CLASS THREE, CLASS FOUR, AND CLASS TWELVE DUE TO THE EFFECTS OF REAPPRAISAL; AMENDING SECTIONS 15-6-133, 15-6-134, AND 15-6-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-133, MCA, is amended to read:

"15-6-133. Class three property — description — taxable percentage. (1) Class three property includes agricultural land as defined in 15-7-202.

(2) Class three property is taxed at *the taxable percentage rate "P"* of its productive capacity.

(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".

(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	*Class Three Taxable Percentage "P"*
0	*30.00*
10	*27.27*
20	*25.00*
30	*23.08*
40	*21.43*
50	*20.00*

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

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Section 2. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at *the taxable percentage rate "P"* of its market value.

(b) Property described in subsection (1)(c) is taxed at *the taxable percentage rate "P"* of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,000	0%
1,001 - 2,000	1,001 - 2,000	10%
2,001 - 2,800	2,001 - 3,000	20%
2,801 - 3,600	3,001 - 4,000	30%
3,601 - 4,400	4,001 - 5,000	40%
4,401 - 5,200	5,001 - 6,000	50%
5,201 - 6,000	6,001 - 7,000	60%
6,001 - 6,800	7,001 - 8,000	70%
6,801 - 7,600	8,001 - 9,000	80%
7,601 - 8,000	9,001 - 10,000	90%

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage *rate "P"* established in subsection (2)(a).

(3) Until January 1, 1986, the taxable percentage rate "P" for class four property is 8.55%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class four property for the revaluation cycle beginning January 1, 1986, as follows:

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(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class four as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the certified statewide percentage increase.

(b) The taxable value of property in class four is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider changes resulting from new construction, additions, or deletions during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	*Class Four Taxable Percentage "P"*
0	*8.55*
10	*7.77*
20	*7.12*
30	*6.57*
40	*6.10*
50	*5.70*
60	*5.34*
70	*5.02*
80	*4.75*
90	*4.50*
100	*4.27*
110	*4.07*
120	*3.88*
130	*3.71*
140	*3.56*
150	*3.42*
160	*3.28*
170	*3.16*
180	*3.05*
190	*2.94*
200	*2.85*
210	*2.75*
220	*2.67*
230	*2.59*
240	*2.51*
250	*2.44*
260	*2.37*
270	*2.31*
280	*2.25*
290	*2.19*
300	*2.13*

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

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Section 3. Section 15-6-142, MCA, is amended to read:

"15-6-142. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first $35,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple.

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at *the taxable percentage rate "P" described in 15-6-134* of its market value.

(b) Property described in subsection (1)(b) is taxed at *the taxable percentage rate "P" described in 15-6-134* of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b) of 15-6-134."

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 16, 1985.

CHAPTER NO. 740

[HB 375]

AN ACT ESTABLISHING STATE EMPLOYEE COMPENSATION PLANS AND BENEFITS LEVELS; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1986 AND 1987; APPROPRIATING FUNDS THEREFOR; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-311 THROUGH 2-18-315, AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the compensation necessary to attract and retain

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competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, *1987*, the:

(a) pay schedules provided for in 2-18-311 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the *49th* legislature;

(b) pay levels provided for in 2-18-311 through 2-18-315 may not be increased through collective bargaining after adjournment of the *49th* legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the *49th* legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 2. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, *1986*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, *1987*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year *1986* shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of *1985*.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1987* shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year *1985*.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay

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matrix for fiscal year *1987*. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year *1987*, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years *1986* and *1987*.

(ii) The compensation of each teacher on the first day of the first pay period in July, *1985*, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, *1985*.

(iii) The compensation of each teacher on the first day of the first pay period in July, *1986*, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, *1985*.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, *1986*, and June 30, *1987*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1986* or *1987*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, *1986*, and June 30, *1987*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1986* or *1987*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, *1987*.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1985*, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1985*, members of the bargaining

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unit involved will continue to receive the compensation they were receiving as of June 30, *1985*.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 3. Section 2-18-311, MCA, is amended to read:

"2-18-311. Statewide pay schedule for fiscal year 1986. The statewide classification pay schedule for fiscal year *1986* is as follows:

Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

	STEP												
GRADE	1	2	3	4	5	6	7	8	9	10	11	12	13
1	9,048	9,729	9,924	10,122	10,324	10,530	10,741	10,956	11,175	11,399	11,627	11,860	12,334
2	9,530	10,247	10,452	10,661	10,874	11,091	11,313	11,539	11,770	12,005	12,245	12,490	12,990
3	10,054	10,811	11,027	11,248	11,473	11,702	11,936	12,175	12,419	12,667	12,920	13,178	13,705
4	10,627	11,427	11,656	11,889	12,127	12,370	12,617	12,869	13,126	13,389	13,657	13,930	14,487
5	11,259	12,106	12,348	12,595	12,847	13,104	13,366	13,633	13,906	14,184	14,468	14,757	15,347
6	11,951	12,850	13,107	13,369	13,636	13,909	14,187	14,471	14,760	15,055	15,356	15,663	16,290
7	12,718	13,675	13,949	14,228	14,513	14,803	15,099	15,401	15,709	16,023	16,343	16,670	17,337
8	13,545	14,564	14,855	15,152	15,455	15,764	16,079	16,401	16,729	17,064	17,405	17,753	18,463
9	14,463	15,552	15,863	16,180	16,504	16,834	17,171	17,514	17,864	18,221	18,585	18,957	19,715
10	15,469	16,633	16,966	17,305	17,651	18,004	18,364	18,731	19,106	19,488	19,878	20,276	21,087
11	16,568	17,815	18,171	18,534	18,905	19,283	19,669	20,062	20,463	20,872	21,289	21,715	22,584
12	17,784	19,123	19,505	19,895	20,293	20,699	21,113	21,535	21,966	22,405	22,853	23,310	24,242
13	19,112	20,551	20,962	21,381	21,809	22,245	22,690	23,144	23,607	24,079	24,561	25,052	26,054
14	20,767	22,330	22,777	23,233	23,698	24,172	24,655	25,148	25,651	26,164	26,687	27,221	28,310
15	22,491	24,184	24,668	25,161	25,664	26,177	26,701	27,235	27,780	28,336	28,903	29,481	30,660
16	24,427	26,266	26,791	27,327	27,874	28,431	29,000	29,580	30,172	30,775	31,391	32,019	33,300
17	26,523	28,519	29,089	29,671	30,264	30,869	31,486	32,116	32,758	33,413	34,081	34,763	36,154
18	28,838	31,009	31,629	32,262	32,907	33,565	34,236	34,921	35,619	36,331	37,058	37,799	39,311
19	31,383	33,745	34,420	35,108	35,810	36,526	37,257	38,002	38,762	39,537	40,328	41,135	41,135
20	34,161	36,732	37,467	38,216	38,980	39,760	40,555	41,366	42,193	43,037	43,898	43,898	43,898
21	37,217	40,018	40,818	41,634	42,467	43,316	44,182	45,066	45,967	46,886	46,886	46,886	46,886
22	40,570	43,624	44,496	45,386	46,294	47,220	48,164	49,127	50,110	50,110	50,110	50,110	50,110
23	44,240	47,570	48,521	49,491	50,481	51,491	52,521	53,571	53,571	53,571	53,571	53,571	53,571
24	48,272	51,905	52,943	54,002	55,082	56,184	57,308	57,308	57,308	57,308	57,308	57,308	57,308
25	52,699	56,666	57,799	58,955	60,134	61,337	61,337	61,337	61,337	61,337	61,337	61,337	61,337"

Section 4. Section 2-18-312, MCA, is amended to read:

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"2-18-312. Statewide pay schedule for fiscal year *1987*. The statewide classification pay schedule for fiscal year *1987* is as follows:

Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

	STEP												
GRADE	1	2	3	4	5	6	7	8	9	10	11	12	13
1	9,392	10,099	10,301	10,507	10,717	10,931	11,150	11,373	11,600	11,832	12,069	12,310	12,802
2	9,874	10,617	10,829	11,046	11,267	11,492	11,722	11,956	12,195	12,439	12,688	12,942	13,460
3	10,398	11,181	11,405	11,633	11,866	12,103	12,345	12,592	12,844	13,101	13,363	13,630	14,175
4	10,971	11,797	12,033	12,274	12,519	12,769	13,024	13,284	13,550	13,821	14,097	14,379	14,954
5	11,603	12,476	12,726	12,981	13,241	13,506	13,776	14,052	14,333	14,620	14,912	15,210	15,818
6	12,295	13,220	13,484	13,754	14,029	14,310	14,596	14,888	15,186	15,490	15,800	16,116	16,761
7	13,062	14,045	14,326	14,613	14,905	15,203	15,507	15,817	16,133	16,456	16,785	17,121	17,806
8	13,889	14,934	15,233	15,538	15,849	16,166	16,489	16,819	17,155	17,498	17,848	18,205	18,933
9	14,807	15,922	16,240	16,565	16,896	17,234	17,579	17,931	18,290	18,656	19,029	19,410	20,186
10	15,813	17,003	17,343	17,690	18,044	18,405	18,773	19,148	19,531	19,922	20,320	20,726	21,555
11	16,912	18,185	18,549	18,920	19,298	19,684	20,078	20,480	20,890	21,308	21,734	22,169	23,056
12	18,128	19,493	19,883	20,281	20,687	21,101	21,523	21,953	22,392	22,840	23,297	23,763	24,714
13	19,464	20,929	21,348	21,775	22,211	22,655	23,108	23,570	24,041	24,522	25,012	25,512	26,532
14	21,140	22,731	23,186	23,650	24,123	24,605	25,097	25,599	26,111	26,633	27,166	27,709	28,817
15	22,885	24,608	25,100	25,602	26,114	26,636	27,169	27,712	28,266	28,831	29,408	29,996	31,196
16	24,846	26,716	27,250	27,795	28,351	28,918	29,496	30,086	30,688	31,302	31,928	32,567	33,870
17	26,967	28,997	29,577	30,169	30,772	31,387	32,015	32,655	33,308	33,974	34,653	35,346	36,760
18	29,312	31,518	32,148	32,791	33,447	34,116	34,798	35,494	36,204	36,928	37,667	38,420	39,957
19	31,888	34,288	34,974	35,673	36,386	37,114	37,856	38,613	39,385	40,173	40,976	41,796	41,796
20	34,701	37,313	38,059	38,820	39,596	40,388	41,196	42,020	42,860	43,717	44,591	44,591	44,591
21	37,795	40,640	41,453	42,282	43,128	43,991	44,871	45,768	46,683	47,617	47,617	47,617	47,617
22	41,191	44,291	45,177	46,081	47,003	47,943	48,902	49,880	50,878	50,878	50,878	50,878	50,878
23	44,906	48,286	49,252	50,237	51,242	52,267	53,312	54,378	54,378	54,378	54,378	54,378	54,378
24	48,988	52,675	53,729	54,804	55,900	57,018	58,158	58,158	58,158	58,158	58,158	58,158	58,158
25	53,471	57,496	58,646	59,819	61,015	62,235	62,235	62,235	62,235	62,235	62,235	62,235	62,235"

Section 5. Section 2-18-313, MCA, is amended to read:

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"2-18-313. Institutional teachers' pay schedules. (1) (a) The 12-month pay schedule for institutional teachers for fiscal year *1986* is as follows:

Annual Hours — 2080
Pay Matrix — Teachers
Term — Twelve Months

Note: Includes Insurance
Matrix Type -- Annual

	Education Level					
YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	*18,486*	*19,067*	*19,663*	*19,954*	*20,244*	*20,840*
1	*19,170*	*19,817*	*20,466*	*20,789*	*21,114*	*21,761*
2	*19,851*	*20,567*	*21,266*	*21,626*	*21,983*	*22,683*
3	*20,534*	*21,319*	*22,068*	*22,461*	*22,854*	*23,604*
4	*21,216*	*22,068*	*22,870*	*23,295*	*23,724*	*24,526*
5	*21,899*	*22,820*	*23,673*	*24,133*	*24,594*	*25,448*
6	*22,579*	*23,569*	*24,473*	*24,969*	*25,463*	*26,367*
7	*23,263*	*24,321*	*25,276*	*25,806*	*26,334*	*27,289*
8	*23,944*	*25,070*	*26,078*	*26,640*	*27,205*	*28,210*
9	*24,627*	*25,822*	*26,880*	*27,475*	*28,073*	*29,131*
10	*25,311*	*26,572*	*27,681*	*28,313*	*28,944*	*30,052*

(b) The 9-month pay schedule for institutional teachers for fiscal year *1986* is as follows:

Annual Hours — 1480
Pay Matrix — Teachers
Term — Nine Months

Note: Includes Insurance
Matrix Type — Annual

	Education Level					
YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	*14,195*	*14,630*	*15,077*	*15,296*	*15,513*	*15,960*
1	*14,708*	*15,193*	*15,680*	*15,922*	*16,166*	*16,651*
2	*15,218*	*15 755*	*16,280*	*16,550*	*16,817*	*17,342*
3	*15,731*	*16,319*	*16,881*	*17,176*	*17,471*	*18,033*
4	*16,242*	*16,881*	*17,483*	*17,801*	*18,123*	*18,725*
5	*16,754*	*17,445*	*18,085*	*18,430*	*18,776*	*19,416*
6	*17,264*	*18,007*	*18,685*	*19,057*	*19,427*	*20,105*
7	*17,777*	*18,571*	*19,287*	*19,685*	*20,081*	*20,797*
8	*18,288*	*19,133*	*19,889*	*20,310*	*20,734*	*21,488*
9	*18,800*	*19,697*	*20,490*	*20,936*	*21,385*	*22,178*
10	*19,313*	*20,259*	*21,091*	*21,565*	*22,038*	*22,869*

(2) (a) The 12-month pay schedule for institutional teachers for fiscal year *1987* is as follows:

Annual Hours — 2080
Pay Matrix — Teachers
Term — Twelve Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	*18,976*	*19,568*	*20,176*	*20,473*	*20,769*	*21,377*
1	*19,673*	*20,333*	*20,995*	*21,325*	*21,656*	*22,316*
2	*20,368*	*21,098*	*21,811*	*22,179*	*22,543*	*23,257*
3	*21,065*	*21,865*	*22,629*	*23,030*	*23,431*	*24,196*
4	*21,760*	*22,629*	*23,447*	*23,881*	*24,318*	*25,137*
5	*22,457*	*23,396*	*24,266*	*24,736*	*25,206*	*26,077*
6	*23,151*	*24,160*	*25,082*	*25,588*	*26,092*	*27,014*
7	*23,848*	*24,927*	*25,902*	*26,442*	*26,981*	*27,955*
8	*24,543*	*25,691*	*26,720*	*27,293*	*27,869*	*28,894*
9	*25,240*	*26,458*	*27,538*	*28,145*	*28,754*	*29,834*
10	*25,937*	*27,223*	*28,355*	*28,999*	*29,643*	*30,773*

(b) The 9-month pay schedule for institutional teachers for fiscal year *1987* is as follows:

Annual Hours — 1480
Pay Matrix — Teachers
Term — Nine Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	*14,592*	*15,036*	*15,492*	*15,715*	*15,937*	*16,393*
1	*15,115*	*15,610*	*16,106*	*16,354*	*16,602*	*17,097*
2	*15,636*	*16,184*	*16,718*	*16,994*	*17,267*	*17,803*
3	*16,159*	*16,759*	*17,332*	*17,633*	*17,933*	*18,507*
4	*16,680*	*17,332*	*17,945*	*18,271*	*18,599*	*19,213*
5	*17,203*	*17,907*	*18,560*	*18,912*	*19,265*	*19,918*
6	*17,723*	*18,480*	*19,172*	*19,551*	*19,929*	*20,621*
7	*18,246*	*19,055*	*19,787*	*20,192*	*20,596*	*21,326*
8	*18,767*	*19,628*	*20,400*	*20,830*	*21,262*	*22,031*
9	*19,290*	*20,204*	*21,014*	*21,469*	*21,926*	*22,736*
10	*19,813*	*20,777*	*21,626*	*22,109*	*22,592*	*23,440*"

Section 6. Section 2-18-314, MCA, is amended to read:

"**2-18-314. Liquor store occupations pay schedules.** (1) The pay schedule for liquor store occupations for fiscal year *1986* is as follows:

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Annual Hours — 2080 Pay Matrix — Retail Clerk	Note: *With* Insurance Matrix Type — Hourly
Grade	$/Hour *W/Ins.*
L1	0.000
L2	*7.404*
L3	*7.904*
L4	*8.183*
L5	*8.474*
L6	*9.084*
L7	*9.748*
L8	*10.492*

(2) The pay schedule for liquor store occupations for fiscal year *1987* is as follows:

Annual Hours — 2080 Pay Matrix — Retail Clerk	Note: *With* Insurance Matrix Type — Hourly
Grade	$/Hour *W/Ins.*
L1	0.000
L2	*7.683*
L3	*8.183*
L4	*8.463*
L5	*8.753*
L6	*9.363*
L7	*10.023*
L8	*10.773*"

Section 7. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for fiscal year *1986* is as follows:

Annual Hours — 2080 Pay Matrix — Blue-Collar	Note: *With* Insurance Matrix Type — Hourly
Grade	$/Hour *W/Ins.*
B 1	*7.836*
B 2	*8.236*
B 3	*8.636*
B 4	*9.036*
B 5	*9.436*
B 6	*9.836*
B 7	*10.236*
B 8	*10.636*
B 9	*11.036*
B10	*11.436*
B11	*11.836*
B12	*12.236*
B00	*12.636*

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(2) The pay schedule for blue-collar workers for fiscal year *1987* is as follows:

Annual Hours — 2080 Pay Matrix — Blue-Collar	Note: *With* Insurance Matrix Type — Hourly
Grade	$/Hour *W/Ins.*
B 1	*8.153*
B 2	*8.553*
B 3	*8.953*
B 4	*9.353*
B 5	*9.753*
B 6	*10.153*
B 7	*10.553*
B 8	*10.953*
B 9	*11.353*
B10	*11.753*
B11	*12.153*
B12	*12.553*
B00	*12.953*"

Section 8. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be *$105* per month for the fiscal year ending June 30, *1986*, and *$115* per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 9. **Appropriation.** There is appropriated to the Office of Budget and Program Planning $16,500,000 from the general fund for the biennium ending June 30, 1987, to carry out the provisions of this act as it

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pertains to the legislative, judicial, and executive branch agencies. The Office of Budget and Program Planning is authorized to increase the expenditure authority of the legislative, judicial, and executive branch agencies by $9,600,000 for the biennium ending June 30, 1987, from funds other than the general fund which accrue under provisions of law to the respective agencies to carry out the provisions of this act.

Section 10. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved May 18, 1985.

CHAPTER NO. 741

[HB 901]

AN ACT EXEMPTING A PUBLIC CONTRACTOR WHO CONSTRUCTS OR WORKS ON A FEDERAL RESEARCH FACILITY FROM THE ADDITIONAL LICENSE TAX IMPOSED ON PUBLIC CONTRACTORS; AMENDING SECTION 15-50-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-50-205, MCA, is amended to read:

"15-50-205. Additional license tax imposed. (1) In addition to the fees enumerated in 37-71-204, each public contractor, *unless he constructs or works on a federal research facility,* shall pay to the department of revenue an additional license fee in a sum equal to 1% of the gross receipts, as defined in 37-71-101, from public contracts during the income year for which the license is issued.

(2) The additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in 37-71-101(4)."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies to any public contract entered into after the effective date of this act, except that any tax already paid to the department of revenue may not be returned to the contractor.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved May 18, 1985.

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CHAPTER NO. 742

[HB 954]

AN ACT PROVIDING FOR THE DETACHMENT OF TERRITORY FROM ONE COUNTY AND ITS ANNEXATION TO ANOTHER COUNTY; PROVIDING FOR THE APPROVAL OF THE ELECTORS OF BOTH COUNTIES AS REQUIRED BY THE MONTANA CONSTITUTION; AMENDING SECTIONS 7-2-2201, 7-2-2202, 7-2-2205 THROUGH 7-2-2207, 7-2-2215 THROUGH 7-2-2219, 7-2-2221 THROUGH 7-2-2224, AND 7-2-2243, MCA; AND REPEALING SECTIONS 7-2-2203 AND 7-2-2210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-2201, MCA, is amended to read:

"7-2-2201. Authorization to create new counties. *(1)* New counties may, from time to time, be formed and created in this state from portions of one or more counties which shall have been created and in existence for a period of more than 2 years, in the manner set forth and provided in this part.

(2) A county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part."

Section 2. Section 7-2-2202, MCA, is amended to read:

"7-2-2202. Limitations on creation of new counties. (1) No new county shall be established which shall reduce any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) No new county shall be formed which contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which such new county is to be established.

(3) No new county shall be established which shall reduce the area of any existing county from which territory is taken to form such new county to less than *500* square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) No territory shall be taken from one county and added to another county unless its surveyed area is greater than 49 square miles;

(5) No new county shall be formed which contains less than *250* square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement."

Section 3. Section 7-2-2205, MCA, is amended to read:

"7-2-2205. Petition for creation of new county. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition

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shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) *If the proposed new county is to be formed from a portion of only one existing county, the* petition *must* be signed by at least 50% of the registered electors of the proposed new county.

(b) *If* the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.

(c) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a separate petition must be presented from each such territory, and each petition must be signed by at least 50% of the registered electors of the territory.

(d) The signatures need not all be appended to one paper but may be signed to several petitions, which must be similar in form. When so signed, the several petitions may be fastened together and shall be treated and presented as one petition."

Section 4. Section 7-2-2206, MCA, is amended to read:

"7-2-2206. Contents of petition. *(1)* Such petition or petitions *must* contain:

(a) a *legal* description of the *territory proposed to be taken from the county in which the petition is circulated;*

(b) a general map, on a separate page or pages, which with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (a);

(c) a statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation;

(d) a statement of the surveyed area, in square miles, which will remain in the county or counties from which territory is taken to form such new county after such county is formed; a statement of the surveyed area in square miles, which will be in the new county after formation; *and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;*

(e) a warning that a person is subject to a $500 fine or 6 months in jail, or both, if he purposefully:

(i) signs a name other than his own to the petition;

(ii) signs more than once for the same issue; or

(iii) signs when not a legally registered voter residing in the territory to be added to the proposed new county;

(f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new county *and* a prayer that such proposed new county be organized into a new county under the provisions of this part*; and*

(g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a prayer that this territory be added to the proposed new county under the provisions of this part.

(2) Each person must sign his name and address in substantially the same manner as on his voter registry card, or the signature will not be counted.

(3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address."

Section 5. **Submission of petition for approval.** (1) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form.

(2) The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part. The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundaries.

(3) If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition.

(4) If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. Thereafter the petition may not be challenged except with regard to the number and validity of signatures appended to it.

Section 6. **Number of signatures required — time allowed for collecting them.** (1) For the purpose of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of registered electors in a territory proposed to be included in a new county is the number of people registered to vote in that territory in the most recent general election.

(2) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form.

Section 7. Section 7-2-2207, MCA, is amended to read:

"**7-2-2207. Affidavits to be attached to petition.** There shall be attached and filed with *each sheet or section of the* petition or petitions an affidavit of *the person who circulated the petition, stating that it is his belief that:*

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(1) it is signed by at least 50% of the qualified electors, as herein provided, of the proposed new county or of the proposed portion thereof taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(2) the signatures affixed thereto are genuine; and

(3) each of such persons so signing was, at the date of such signing, a qualified elector of *the proposed new county or of the portion thereof taken from an existing county.*"

Section 8. **Verification of signatures by county clerk.** The clerk of the county receiving the petition shall check the names of all signers to verify that they are registered electors of the proposed territory to be taken from the county. In addition, the county clerk shall randomly select signatures on each sheet or section of the petition and compare them with the signatures of the electors as they appear on the registration records of the office. If all of the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the registration records of the office.

Section 9. Section 7-2-2215, MCA, is amended to read:

"**7-2-2215. Election on question of creating new county — proclamation and notice.** (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day, not less than *60* days thereafter, for the purpose of determining whether *the* territory *proposed to be taken from the county* shall be established and organized into a new *or enlarged* county and for the election of officers and location of a county seat therefor in case the vote at the election is in favor of the establishment and organization of *a* new county *formed from a portion of one existing county or from portions of two or more existing counties.*

(2) The question of determining whether the proposed territory shall be taken from the county and added to the proposed new county must be included on the ballot for the next countywide primary, general, or school election scheduled not less than 60 days after the date of the proclamation and notice.

(3) All registered electors of the county shall be entitled to vote at the election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(4) If the proposed new county is an existing county to be enlarged by territory taken from the county in which the petition was filed, the board of county commissioners of the proposed new county shall hold an election in the manner described in subsections (1) through (3)."

Section 10. Section 7-2-2216, MCA, is amended to read:

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"**7-2-2216. Establishment of election precincts.** *The* board of county commissioners *of the county in which the petition was filed* shall also, if necessary for the purpose of the election provided for in 7-2-2215*(1)*, change the boundaries of the election precincts in *the* old county to make the same conform to the boundaries of the proposed new county, provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the then-existing county in which it is located and from which the territory is proposed to be taken."

Section 11. Section 7-2-2217, MCA, is amended to read:

"**7-2-2217. Appointment of election officials.** The board of county commissioners *of the county concerned* shall appoint election judges to act at the election provided for in 7-2-2215*(1) or 7-2-2215(4)* and to be paid by the board."

Section 12. Section 7-2-2218, MCA, is amended to read:

"**7-2-2218. Form of ballot.** (1) *If the proposed new county is to be formed from one county, or from portions of two or more existing counties, the ballot shall be in the following form:*

(a) proclamation and notice required by 7-2-2215 shall require the electors to cast ballots which shall contain the words "For the new county of .... (giving the name of the proposed new county) — Yes" and "For the new county of .... (giving the name of the proposed new county) — No".

(b) The ballots shall also contain the names of individuals to be voted for to fill the various elective offices designated in the proclamation for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as herein otherwise provided.

(c) There shall also be printed upon the ballot the words "For the county seat" and the names of all cities or towns which may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the proclamation and notice required by 7-2-2215(1) shall require the electors to cast ballots which shall contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words "For the territory described (or commonly known as ....) to be detached from .... County and added to .... County — Yes" and "For the territory described (or commonly known as ....) to be detached from .... County and added to .... County — No"."

Section 13. Section 7-2-2219, MCA, is amended to read:

"**7-2-2219. Conduct of election.** (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the

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county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election and which are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county which are within their respective counties.

(2) The *elections* provided for in 7-2-2215 shall be governed and controlled by the general election laws of the state, so far as the same are applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election shall be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election shall be made in the manner provided by law for the nomination of candidates by petition."

Section 14. Section 7-2-2221, MCA, is amended to read:

"7-2-2221. Determination of county seat — temporary county seat. (1) *If the proposed new county is to be formed from one county or from portions of two or more existing counties,* the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county *at the election provided for in 7-2-2215(1),* and the majority of all the votes cast therefor shall determine the election thereon.

(2) (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

(b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.

(c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(3) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the question of the election of the county seat may not be submitted to the electors at the election provided for in 7-2-2215."

Section 15. Section 7-2-2222, MCA, is amended to read:

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"7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast *by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative,* the board of county commissioners shall, by a resolution entered upon its minutes, declare *the new or enlarged county* duly formed and created as a county of this state, of the class to which the same belongs and under the name of .... County, and, *if appropriate,* that the city or town receiving the highest number of votes cast at the election for county seat shall be the county seat of the county until removed in the manner provided by law and designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast on the issue *by those voting in the county, or by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative,* the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of the old county or counties shall be instituted for at least *4* years after such determination."

Section 16. Section 7-2-2223, MCA, is amended to read:

"7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and duly certified, *together with a legal description of the new boundaries of each affected county,* in the office of the secretary of state. Ninety days after the date of such filing:

(a) the new county is considered to be fully created;

(b) the organization thereof is considered completed; and

(c) *any new* county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed must immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by his signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices."

Section 17. Section 7-2-2224, MCA, is amended to read:

"7-2-2224. Offices and supplies for new county. *If the new county has a new county seat under 7-2-2221, the* board of county commissioners of the new county may provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government."

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Section 18. Section 7-2-2243, MCA, is amended to read:

"7-2-2243. Compensation of commission members. Members of the board of commissioners provided for under 7-2-2241 shall receive a compensation of not to exceed *$25* per day for every day they are actually employed under the provisions of this part. All of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county. The amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of county commissioners as is provided by law for claims against any county."

Section 19. **Repealer.** Sections 7-2-2203 and 7-2-2210, MCA, are repealed.

Section 20. **Codification instruction.** Sections 4, 5, and 7 are intended to be codified as an integral part of Title 7, chapter 2, part 22, and the provisions of Title 7, chapter 2, part 22, apply to sections 4, 5, and 7.

Approved May 18, 1985.

CHAPTER NO. 743

[HB 240]

AN ACT TO REVISE MONTANA PROPERTY TAX CLASSIFICATION LAW TO COMPLY WITH FEDERAL LAW GRANTING CERTAIN TYPES OF PROPERTY SPECIAL CONSIDERATION AND WITH PROVISIONS OF THE MONTANA CONSTITUTION; REQUIRING THE DEPARTMENT OF REVENUE TO CONDUCT AUDITS OF ASSESSMENTS ON COMMERCIAL PERSONAL PROPERTY; REQUIRING THE DEPARTMENT OF REVENUE TO ANNUALLY DETERMINE THE TAXABLE PERCENTAGE RATE APPLICABLE TO CLASS THIRTEEN PROPERTY; DEFINING THE TERM "COMMERCIAL" AS IT APPLIES TO PROPERTY SUBJECT TO TAXATION; AMENDING SECTIONS 15-1-101, 15-6-134, 15-6-138, 15-6-141, 15-8-104, 15-8-111, AND 15-23-202, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

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WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135;

(F) all property described in 15-6-136; and

(G) all property described in [section 6].

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(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(j) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(k) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(l) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(m) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(n) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

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(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that:

(i) consist of at least 9 holes and not less than 3,000 lineal yards; and

(ii) were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(c) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,000	0%
1,001 - 2,000	1,001 - 2,000	10%
2,001 - 2,800	2,001 - 3,000	20%
2,801 - 3,600	3,001 - 4,000	30%
3,601 - 4,400	4,001 - 5,000	40%
4,401 - 5,200	5,001 - 6,000	50%
5,201 - 6,000	6,001 - 7,000	60%
6,001 - 6,800	7,001 - 8,000	70%
6,801 - 7,600	8,001 - 9,000	80%
7,601 - 8,000	9,001 - 10,000	90%

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(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage established in subsection (2)(a).

(3) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 3. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax;

(e) aircraft;

(f) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and

(g) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 4. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class eleven property — description — taxable percentage. (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations;

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state;

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven; *and*

(iv) airline and railroad transportation property included in class thirteen.

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(2) Class eleven property is taxed as follows:

(a) Property described in *subsections* (1)(a) and *(1)*(b) is taxed at 12% of market value.

(b) Except as provided in 15-23-202, property described in subsection (1)(c) is taxed at 15% of market value."

Section 5. **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes:

(a) all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on [the effective date of this act]; and

(b) all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on [the effective date of this act].

(2) For the taxable year beginning January 1, 1986, and for each taxable year thereafter, class thirteen property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3).

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property; and

(b) B is the total statewide market value of all commercial property as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property.

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4) by "M" prior to calculating "A" in subsection (3).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad and airline taxable values.

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(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976 and the Tax Equity and Fiscal Responsibility Act of 1982, as they read on [the effective date of this act], the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property as commercial property is defined in 15-1-101(1)(d).

Section 6. **Class fourteen property — description — taxable percentage.** (1) Class fourteen property includes:

(a) motorcycles;

(b) watercraft;

(c) all-terrain vehicles;

(d) harness, saddlery, and other tack equipment;

(e) all other property used for noncommercial purposes which is not real property or an improvement to real property and which is not included in another class or exempt from taxation under Title 15, chapter 6, part 2.

(2) Class fourteen property is taxed at 11% of its market value.

Section 7. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks, agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140, *[section 5], and [section 6]*. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in classes four through eleven, *[section 5], and [section 6]* is the percentage of market value established for each class of property in 15-6-134 through 15-6-141, *[section 5], and [section 6]*.

(5) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133 under class three are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2), 15-6-132, and 15-6-133 for each class of property."

Section 8. Section 15-23-202, MCA, is amended to read:

"15-23-202. Assessment — how made. (1) The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.

(2) In determining the taxable value of railroad property, the department *shall determine* the percentage *rate "R"* provided for in *[section 5]* in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Section 9. Section 15-8-104, MCA, is amended to read:

"15-8-104. Department audit of taxable value — costs of audit paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The department of revenue shall conduct audits of the assessment of all commercial personal property to assure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the

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audits conducted by the department shall be primarily directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of *any* audit *performed under subsection (1) or (2)* shall be paid by the department."

Section 10. **Rulemaking authority — extension of existing authority.** (1) The department of revenue shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(2) The department shall also adopt rules specifying the methodology to be used in conducting sales assessment ratio studies and in determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(3) Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

(4) The department may initiate rulemaking proceedings under this section on or after the date on which this act is passed and approved, but no rule adopted under this section may be made effective before January 1, 1986.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective dates.** (1) This act, except section 10 and this section, is effective January 1, 1986.

(2) Section 10 and this section are effective on passage and approval.

Approved May 24, 1985.

CHAPTER NO. 744

[HB 295]

AN ACT TO GENERALLY REVISE THE NEW MOTOR VEHICLE WARRANTY REMEDY LAW; INCREASING MINIMUM WARRANTY PERIODS; PROVIDING FOR REMEDIES, DISCLOSURES, AND PENALTIES; CREATING AN ARBITRATION PROCEDURE; AMENDING SECTIONS 61-4-501 THROUGH 61-4-503 AND 61-4-505 THROUGH 61-4-507, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Department" means the department of commerce created in 2-15-1801.

(4) "Division" means the division of motor vehicles defined in 61-1-301.

(5) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(6) "Motor vehicle" means a vehicle propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a motor home as defined in 61-1-130, *a truck with 10,000 pounds or more gross vehicle weight rating, or a motorcycle as defined in 61-1-105.*

(7) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use shall be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(8) "Warranty period" means the period ending *2 years* after the date of the original delivery to the consumer of a new motor vehicle *or during the first 18,000 miles of operation,* whichever is earlier."

Section 2. Section 61-4-502, MCA, is amended to read:

"61-4-502. Notice — warranty enforceable after warranty period — when. (1) If a consumer notifies in writing the manufacturer or its agent during the warranty period that a new motor vehicle does not conform to all applicable express warranties, the repairs necessary to conform the new motor vehicle to the express warranties shall be made by or at the expense of the warrantor, regardless of the expiration of the warranty period after notification of nonconformity is given by the consumer.

(2) The warranty period of an express warranty is extended to equal the time that repair services are not available because of war or invasion or because of strike or fire, flood, or other natural disaster. The presumption provided herein may not apply against a manufacturer who has not received prior written notification from or on behalf of the consumer and has not had an opportunity to cure the alleged defect.

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(3) The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owner's manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle. The manufacturer must include with the warranty or owner's manual the name and address where the written notification must be sent."

Section 3. Section 61-4-503, MCA, is amended to read:

"61-4-503. Replacement for nonconformity to warranty. (1) If after a reasonable number of attempts the manufacturer or its agent or authorized dealer is unable, during the warranty period, to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer, the manufacturer shall replace it with a new motor vehicle of the same model and style and of equal value, unless for reasons of lack of availability such replacement is impossible, in which case the manufacturer shall replace it with a vehicle of comparable market value.

(2) As an alternative to replacement, the manufacturer may accept return of the new motor vehicle from the consumer upon refund to him of the full purchase price, *plus reasonable collateral charges and incidental damages*, less a reasonable allowance for the consumer's use of the motor vehicle. The refund shall be paid to the consumer and to a lienholder, if any, in proportion to their interests."

Section 4. Section 61-4-505, MCA, is amended to read:

"61-4-505. Dealer exemption — liability to manufacturer. *(1)* Nothing in this part imposes any liability on a dealer or creates a cause of action by a consumer against a dealer under 61-4-503.

(2) A dealer is not liable to a manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions."

Section 5. Section 61-4-506, MCA, is amended to read:

"61-4-506. Provisions nonexclusive — applicability of UCC — defenses. *(1)* The provisions of this part do not limit the rights or remedies available to a consumer under any other law.

(2) All express warranties arising from the sale of a new motor vehicle are subject to the provisions of Title 30, chapter 2, part 3.

(3) It is an affirmative defense to a claim brought under this part that an alleged nonconformity does not substantially impair the use, market value, or safety of the vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by the consumer."

Section 6. Section 61-4-507, MCA, is amended to read:

"61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure *certified by the department*

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to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction."

Section 7. **Manufacturer's dispute settlement procedure — certification — prohibited contents.** (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department. The department shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with such federal regulations and subsection (2). The department shall report to the division all manufacturer's procedures certified. The department may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or his representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer, and further may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).

Section 8. **Annual audit — revocation or suspension of certification.** (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, along with any additional information the department may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. The department shall notify the division of any revocation or suspension of a certification. The division may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2.

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Section 9. **Notice on resale of replaced vehicle.** A motor vehicle which is returned to the manufacturer and which requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The division may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective.

Section 10. **Arbitration procedure.** (1) The department shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to [Title 27, chapter 5]. All arbitration shall take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in [section 16], a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an arbitration panel only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure which has been certified by the department under [section 7].

Section 11. **Composition of arbitration panel.** An arbitration panel hearing a grievance under this part must consist of three members. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department may maintain a list of persons willing to serve on panels from which the third member may be chosen.

Section 12. **Implementation of arbitration.** (1) A consumer may initiate a request for arbitration by filing a notice with the department. The consumer shall file, on a form prescribed by the department, any information considered relevant to the resolution of the dispute and shall return the form, along with a $50 filing fee, within 5 days after receiving it. The complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department determines that a complaint does not allege a warranty violation, it must refund the filing fee.

(3) Upon acceptance of a complaint, the department shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department, any information considered relevant to the resolution of the dispute. The manufacturer must return the form within 15 days of receipt, with a filing fee of $250.

(4) Fees collected under this section shall be deposited in a special revenue fund for the use of the department in administering [this act].

(5) The manufacturer's fee provided in subsection (3) is due only if the department arbitration procedures are utilized.

Section 13. **Role of department — expert.** (1) The department shall investigate, gather, and organize all information necessary for a fair and

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timely decision in each dispute. The department may, on behalf of the arbitration panel, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the panel, the department may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the panel. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented. The division may suggest an expert at the request of the department.

Section 14. **Action by arbitration panel — decision.** (1) The arbitration panel shall, as expeditiously as possible, but not later than 60 days after the department has accepted a complaint, render a fair decision based on the information gathered and disclose its findings and its reasoning to the parties.

(2) The decision shall provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision shall specify a date for performance and completion of all awarded remedies. The department shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of [Title 27, chapter 5, part 3]. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent his costs and reasonable attorney fees.

Section 15. **Records of disputes.** The department shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. A copy of the statistical summary must be filed with the division and must be considered by it in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2.

Section 16. **Nonconforming procedure — arbitration de novo.** A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to [section 7] and the provisions of Title 16, Code of Federal Regulations, part 703, as in

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effect on October 1, 1983, may appeal any decision rendered as the result of such a procedure by requesting arbitration de novo of the dispute by a department panel. Filing procedures and fees for appeals must be the same as those required in [sections 10 through 12]. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.

Section 17. **Nondelegable.** The liabilities and obligations contained in this act may not be delegated or assigned to or assumed by any other person or entity.

Section 18. **Rulemaking.** The department may adopt rules to implement the provisions of this part.

Section 19. **Penalty.** A violation of any provision of this part is an unfair or deceptive trade practice under Title 30, chapter 14, part 2, and the penalties provided in 30-14-224(1) apply.

Section 20. **Applicability.** This act applies to automobiles sold on or after October 1, 1985.

Section 21. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Codification instruction.** Sections 7 through 19 are intended to be codified as an integral part of Title 61, chapter 4, part 5, and the provisions of Title 61, chapter 4, part 5, apply to sections 7 through 19.

Section 23. **Coordination.** If this act and Senate Bill No. 110 are both passed and approved, including sections 10 and 12 of this act, the bracketed language in sections 10 and 14 is replaced with a reference to Senate Bill No. 110.

Section 24. **Effective date.** This act is effective on passage and approval.

Approved May 24, 1985.

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APPROPRIATIONS

ENACTED BY THE

Forty-ninth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1985

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APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-NINTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1985, 1986, and 1987 for the operation of the Forty-Ninth Legislature and presession costs of the Fiftieth Legislature:

House of Representatives	$2,173,551
Senate	1,279,768
Legislative Council	
Legislative Printing, Information, and Business Offices	374,585
Legislative Telephone Services	138,942
Legislative Publications — Printing and Distribution	97,376
Legislative Publications — Production of Camera-ready Copy	54,570
Department of Administration	
Legislative Mail Service	3,480

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 11, 1985.

HOUSE BILL NO. 203

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1985, WHICH INCREASES WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR SOME APPROPRIATIONS TO CONTINUE INTO THE FISCAL YEAR ENDING JUNE 30, 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

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Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the Governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act, for the fiscal year ending June 30, 1985:

AGENCY AND PROGRAM	AMOUNT	FUND
HIGHWAY TRAFFIC SAFETY		
Traffic Safety	$ 94,650	Federal & Other Special Revenue
Traffic Safety	125,300	Federal & Other Special Revenue

The traffic safety appropriation of $125,300 is for increased awareness of seat belt usage and drunk driving and is appropriated for fiscal 1985 and 1986.

DEPARTMENT OF JUSTICE		
Highway Patrol	54,500	Federal & Other Special Revenue
Criminal Investigation	63,853	Federal & Other Special Revenue
Forensic Science	4,949	Federal & Other Special Revenue
Agency Legal Services	98,432	Proprietary
MONTANA ARTS COUNCIL		
Promotion of the Arts	57,013	Federal & Other Special Revenue
MONTANA STATE LIBRARY		
Library Development	204,231	Federal & Other Special Revenue
ADVISORY COUNCIL FOR VOCATIONAL EDUCATION		
Administration	8,772	Federal & Other Special Revenue
MONTANA HISTORICAL SOCIETY		
Library	10,000	Federal & Other Special Revenue
Museum	25,924	Federal & Other Special Revenue
Magazine	25,000	Proprietary
Education	10,000	Federal & Other Special Revenue

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AGENCY AND PROGRAM	AMOUNT	FUND
Historical Sites Preservation	465,000	Federal & Other Special Revenue
FIRE SERVICES TRAINING SCHOOL		
Fire Services Training	14,000	Federal & Other Special Revenue
DEPARTMENT OF FISH, WILDLIFE, & PARKS		
Enforcement	70,000	State Special Revenue
Wildlife	19,000	State Special Revenue
Field Services	100,000	State Special Revenue

The department is authorized to carry forward a loan from the license account to the parks acquisition account because of an anticipated cash shortfall. This loan extension expires on June 30, 1986.

DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES		
Director's Office	1,282	Federal & Other Special Revenue
Management Services	163,294	State Special Revenue

The management services appropriation from the federal and other special revenue fund contained in House Bill No. 447, Laws of 1983, is reduced by $163,294.

Health Services	1,755,000	Federal & Other Special Revenue
Rabies Vaccine	40,000	Federal & Other Special Revenue

The cap for the preventative health block grant in HB 447, L. 1983, of $607,264 is increased by $1,282.

DEPARTMENT OF HIGHWAYS		
General Operations	314,368	Federal & Other Special Revenue
Construction	6,206,501	State Special Revenue
Construction	10,955,460	Federal & Other Special Revenue
DEPARTMENT OF STATE LANDS		
Central Management	50,000	Proprietary

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AGENCY AND PROGRAM	AMOUNT	FUND
Reclamation Division	2,300,000	Federal & Other Special Revenue
DEPARTMENT OF LIVESTOCK		
Predator Control	233,600	State Special Revenue
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION		
Conservation Districts	3,600	Federal & Other Special Revenue
Energy Planning	29,602	Federal & Other Special Revenue
Water Resources	909,525	State Special Revenue
	21,940	Federal & Other Special Revenue
Energy Planning	32,750	Federal & Other Special Revenue

The energy planning appropriation of $32,750 is for the blueprint loan library in the amount of $11,000 and for the Montana river study in the amount of $21,750 and is appropriated for fiscal 1985 and 1986.

DEPARTMENT OF ADMINISTRATION		
Central Stores	1,000,000	Proprietary
Mail & Distribution	30,225	Proprietary
Investments	30,500	Proprietary
DEPARTMENT OF AGRICULTURE		
Plant Industry	7,617	Federal & Other Special Revenue
Environmental Management	1,600	Federal & Other Special Revenue
DEPARTMENT OF INSTITUTIONS		
Mental Health	2,000	Federal & Other Special Revenue
MOUNTAIN VIEW SCHOOL		
Care and Custody	1,217	Federal & Other Special Revenue
PINE HILLS SCHOOL		
Care & Custody	2,147	Federal & Other Special Revenue
MONTANA STATE HOSPITAL		
Treatment Services	5,086	Federal & Other Special Revenue

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AGENCY AND PROGRAM	AMOUNT	FUND
DEPARTMENT OF COMMERCE		
Housing	793,554	Federal & Other Special Revenue
Bonding Authority	150,000	Proprietary
Aeronautics	29,890	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS		
Army National Guard	85,000	Federal & Other Special Revenue
DEPARTMENT OF SOCIAL & REHABILITATION SERVICES		
Developmental Disabilities Planning & Advisory Council	46,874	Federal & Other Special Revenue
Vocational Rehabilitation	340,000	Federal & Other Special Revenue
Visual Services	60,000	Federal & Other Special Revenue
Social Services	670,713	Federal & Other Special Revenue
Social Services	86,008	Federal & Other Special Revenue
Assistance Payment	925,574	Federal & Other Special Revenue

The social services appropriation of $86,008 is for combating child sexual abuse in day-care centers and is appropriated for fiscal 1985 and 1986.

TOTALS	$ 7,731,810	State Special Revenue
	$19,619,584	Federal & Other Special Revenue
	$ 1,384,157	Proprietary

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 24, 1985.

HOUSE BILL NO. 206

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1985; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

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Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the Governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. **Expenditures to be restrained.** State agencies shall restrain year-end expenditures to those prudent and necessary to provide authorized services. They shall not make expenditures which would be considered trivial by reasonable people. The Office of Budget and Program Planning shall monitor year-end expenditures and discourage questionable expenditures, including the purchasing of decorative office accessories, excess supplies, or equipment not considered in the appropriation authorized in House Bill 447 of the 48th Legislature or this act.

Section 5. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act, for the fiscal year ending June 30, 1985:

AGENCY AND PROGRAM	AMOUNT	FUND
SUPREME COURT		
District Judges' Pay Plan Costs	$ 46,830	General
Supreme Court Operation Costs	18,779	General
GOVERNOR'S OFFICE		
Cabin Creek Coal Mine	20,000	General
SECRETARY OF STATE		
Data Processing Cost Overrun	85,000	General
STATE AUDITOR		
Employee Retirement	26,029	General
OFFICE OF PUBLIC INSTRUCTION		
Match FY85 Federal School Lunch Funds	2,745	General
Match FY83 Federal School Lunch Funds	9,618	General
Vocational Education Funds Settlement	40,414	General
Ridgeway v. OPI and MHSA (82-59-M) Settlement	41,000	General
DEPARTMENT OF JUSTICE		
Indian Legal Jurisdiction Efforts	217,000	General
Highway Patrol	489,752	State Special Revenue
DEPARTMENT OF PUBLIC SERVICE REGULATION		
Additional Costs of Montana Power Company Pipeline Case	8,767	General

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AGENCY AND PROGRAM	AMOUNT	FUND
	8,767	Federal & Other Special Revenue
Participation in Montana-Dakota Utilities Docket	20,000	General
STATE LIBRARY		
Crabtree Decision Penalties	33,329	General

The remaining $10,815 of the settlement shall be paid from the fiscal year 1985 general fund appropriation to the state library in House Bill 447 of the 48th Legislature.

DEPARTMENT OF STATE LANDS		
Fire Suppression Costs	2,896,992	General
DEPARTMENT OF LIVESTOCK		
Rabies Investigations	8,000	General
Successful Classification Appeal	8,000	General
DEPARTMENT OF AGRICULTURE		
Environmental Management	37,312	Federal & Other Special Revenue
DEPARTMENT OF COMMERCE		
Burlington Northern Legal Costs	253,144	General
Hard-Rock Mining Operating Costs	20,804	General
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES		
Assistance Payments	3,488,696	General
Medical Assistance	165,906	General
Montana Medicaid Information System (MMIS) Procurement Costs	113,860	General
	1,024,740	Federal & Other Special Revenue

The department is authorized the use of all remaining contingency fund money appropriated in HB 447, L. 1983, for the purpose of reducing the amount required for supplemental funding. All matching federal funds are appropriated.

DEPARTMENT OF LABOR AND INDUSTRY		
Silicosis Benefits	49,700	General

The Department of Institutions is authorized to expend the amount covered under its service agreement with the System Development Bureau of the Department of Administration.

TOTALS	$7,574,613	General

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AGENCY AND PROGRAM	AMOUNT	FUND
	$ 489,752	State Special Revenue
	$1,070,819	Federal and Other Special Revenue

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1985.

HOUSE BILL NO. 212

AN ACT TO APPROPRIATE FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR PUBLIC SCHOOL SUPPORT OTHER THAN FOR SPECIAL EDUCATION; TO APPROPRIATE FUNDS TO SCHOOL DISTRICT NO. 10, DEER LODGE COUNTY, AND HIGH SCHOOL DISTRICT NO. 10, DEER LODGE COUNTY, FROM THE STATE EQUALIZATION AID ACCOUNT TO COMPENSATE FOR A SIGNIFICANT DECLINE IN ENROLLMENT AND TAXABLE VALUATION OVER THE PREVIOUS 5 YEARS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** All revenues received under the provisions of 20-9-343 for state equalization aid are appropriated to the Superintendent of Public Instruction for the biennium ending June 30, 1987, for public school support other than for special education.

Section 2. **Contingency appropriation.** There is appropriated from the general fund $32,560,000 for the biennium ending June 30, 1987, to be used to the extent funds appropriated in section 1 are insufficient to finance the maximum general fund budget schedules for public schools excluding special education.

Section 3. **Appropriation to Deer Lodge County school districts.** There is appropriated $281,000 from the state equalization aid account, state special revenue fund, for the biennium ending June 30, 1987, to certain Deer Lodge County school districts to compensate for a significant decline in school enrollment and a 25% decline in school district taxable valuation over the previous 5 years, to be allocated in the following manner:

	1985-86	1986-87
School District No. 10 Deer Lodge County	$115,000	$ 8,000

High School District No. 10 Deer Lodge County	127,000	31,000
Total	$242,000	$ 39,000

Approved May 18, 1985.

HOUSE BILL NO. 320

AN ACT TO APPROPRIATE $20,000 FOR THE 1987 BIENNIUM TO STUDY FAMILY UNIFICATION FACILITIES AT MONTANA STATE PRISON AND BRING PROPOSED RULES AND IMPLEMENTATION COSTS BEFORE THE 50TH LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated for the 1987 biennium $20,000 from the other special revenue fund to the Montana State Prison to be used to study facilities to allow overnight family visits and bring proposed rules and implementation costs before the 50th Legislature.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 6, 1985.

HOUSE BILL NO. 381

AN ACT TO APPROPRIATE $40,000 FROM THE STATE EQUALIZATION AID ACCOUNT TO PAY THE DE SMET SCHOOL DISTRICT FOR STATE EQUALIZATION AID WHICH THE DISTRICT DID NOT RECEIVE FOR THE SCHOOL FISCAL YEARS 1979 THROUGH 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $40,000 from the state equalization aid account to the Office of Public Instruction for payment to the De Smet School District, Missoula County, for state equalization aid which the district did not receive for the school fiscal years 1979 through 1981. The Department shall obtain a comprehensive release of all claims, including costs and attorney fees, before payment of the sum appropriated in this section.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved May 10, 1985.

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HOUSE BILL NO. 500

THE GENERAL APPROPRIATIONS ACT OF 1985 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1987; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Title.** This act may be cited as the "General Appropriations Act of 1985".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the Governor or his designated representative for executive branch agencies; the Chief Justice of the Supreme Court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the Board of Regents or its designated representative for the university system.

(3) "University system unit" means the board of regents, office of the Commissioner of Higher Education, University of Montana at Missoula, Montana State University at Bozeman, Montana College of Mineral Science and Technology at Butte, Eastern Montana College at Billings, Northern Montana College at Havre, Western Montana College at Dillon, the Agricultural Experiment Station with central offices at Bozeman, the Cooperative Extension Service with central offices at Bozeman, the Forestry and Conservation Experiment Station with central offices at Missoula, or the Bureau of Mines and Geology with central offices at Butte.

Section 3. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received a general fund appropriation.

Section 4. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its 1989 biennial budget request to the Budget Director and the Legislative Fiscal Analyst pursuant to the time schedule established in section 17-7-112(1), MCA. If any agency fails to submit its final, complete budget request by the deadlines established in section 17-7-112(1), MCA, the expenditure authority granted in this act must be reduced or rescinded by the Budget Director unless the agency

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director certifies that an emergency situation has precluded a timely budget presentation and the Budget Director approves an extension not to exceed 30 days. Employees added through the appropriation of federal or state special revenues or proprietary funds in this act shall not be included in the current level budget presented to the 1987 Legislature if their continuance requires general fund support.

Section 6. **Detailed budget information.** Within 2 days after submission of the preliminary executive budget to the Legislative Fiscal Analyst, the Budget Director shall give the Legislative Fiscal Analyst the Governor's preliminary expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by accounting entity. Within 1 day after the Legislative Finance Committee presents the budget analysis to the 50th Legislature, the Budget Director and the Legislative Fiscal Analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding sources detailed by accounting entity. This final information must be filed in the respective offices and available to members of the Legislature and the general public.

Section 7. **Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance. However, if any agency allocates its appropriations to the second expenditure level in the state accounting system, separate operation plans need not be submitted to the approving authority.

Section 8. **Program transfers.** The approving authority may approve agency requests for program transfers, within each fiscal year, not to exceed 5% of the total agency budget unless such a transfer is specifically prohibited by this act or by statute. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the Legislative Fiscal Analyst. Upon approval of the transfer, the approving authority shall inform the fiscal analyst of the approved transfer and the justification for the transfer.

Section 9. **Reduction of appropriation.** In the event of a shortfall in revenue, the Governor may reduce any or all appropriations. No appropriation may be reduced by more than 15%. The following appropriations may not be reduced:

(1) payment of interest and retirement of state debt;

(2) the legislative branch;

(3) the judicial branch;

(4) school foundation program; or

(5) salaries of elected officials during their terms of office.

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Section 10. **Access to records of contracting entities.** (1) Unless a contract to provide a service to members of the public on behalf of the state, either written or oral, made with a nonstate entity complies with subsection (2), no money appropriated by this act may be expended for such contract.

(2) Every contract described in subsection (1) must contain a provision to allow access, for legislative audit and fiscal analysis, to the records of the contracting nonstate entity sufficient to determine whether the parties to the contract have complied with the terms of the contract. Such an audit and fiscal analysis requires access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

(3) The state may unilaterally terminate any contract upon refusal by the contracting nonstate entity to allow access to its records necessary to carry out such a legislative audit or analysis.

Section 11. **Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5, of the Montana Constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1987. The portion of the general fund which represents this appropriation is appropriated to the Department of Commerce in House Bill 500, items 8, 9, 11, and 15, the vocational-technical centers in House Bill 500, and any funds not otherwise designated shall be considered part of the university system's appropriation in House Bill 500.

Section 12. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

Section 13. **Audit costs.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall to the maximum extent allowable under federal regulations charge audit costs to federal funds.

Section 14. **Pay plan appropriation coordination.** From the appropriation for the pay plan act in House Bill 375, the Office of Budget and Program Planning is authorized to increase the expenditure authority of the vocational-technical centers, community colleges, and the Department of Institutions for the community mental health centers.

Section 15. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 16. **Expenditures to be restrained.** State agencies shall restrain year-end expenditures to those prudent and necessary to provide authorized services. They shall not make expenditures which would be considered trivial by reasonable people. The Office of Budget and Program Planning shall monitor year-end expenditures, and a report shall be made to the Legislative Finance Committee.

Section 17. **Appropriations.** The following money is appropriated for the respective fiscal years:

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A. GENERAL GOVERNMENT AND HIGHWAYS

	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
LEGISLATIVE AUDITOR										
1. Operations	1,113,793	901,002			2,014,795	1,085,849	942,089			2,027,938
2. Legislative Request Travel	5,000				5,000	5,000				5,000
3. Telephone Costs	2,432				2,432					
Total	1,121,225	901,002			2,022,227	1,090,849	942,089			2,032,938

Item 2 is for travel relating to legislative requests.

Item 3 is a biennial appropriation to move telephones if the capitol is renovated.

LEGISLATIVE FISCAL ANALYST										
1. Operations	694,999				694,999	749,603				749,603
2. Data Processing	56,433				56,433					
3. Consultants	30,000				30,000					
Total	781,432				781,432	749,603				749,603

Items 2 and 3 are biennial appropriations.

LEGISLATIVE COUNCIL										
1. Operations	1,606,735				1,606,735	2,092,635				2,092,635
2. Montana Code Annotated		969,000			969,000					
3. NCSL Dues	32,500				32,500	40,088				40,088
4. CSG Dues	31,556				31,556	33,614				33,614
5. NCSL Travel	49,000				49,000					
6. CSG Travel	25,200				25,200					
7. Interim Studies	49,000				49,000					
8. Forestry Task Force	20,000				20,000					
9. Revenue Oversight Committee	25,000				25,000					
10. Administrative Code Committee	14,700				14,700					
11. Capitol Building and Planning	4,900				4,900					
12. Five-State Biennial Conference	8,800				8,800					
13. Water Task Force	3,920				3,920					
14. Livestock Task Force	4,312				4,312					
15. Legislative Management Consultant	1,960				1,960					
16. Coal Tax Subcommittee		12,000			12,000					
17. Montana-Western Canadian Provinces Boundary Advisory Committee — (HB 488)	4,200				4,200					
Total	1,881,783	981,000			2,862,783	2,166,337				2,166,337

Items 2 and 5 through 17 are biennial appropriations.

In the event studies in addition to those specifically assigned by bill or resolution are assigned to the Revenue Oversight Committee, the Legislative Council shall allocate funds to the committee for those studies.

CONSUMER COUNSEL

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
1. Operations		781,776			781,776		797,570			797,570
2. Contract Services		100,000			100,000		100,000			100,000
Total		881,776			881,776		897,570			897,570

Item 2 is for expert witness fees for unanticipated cases.

ENVIRONMENTAL QUALITY COUNCIL										
1. Operations	232,086				232,086	232,327				232,327
JUDICIARY										
1. Supreme Court Operations										
a. Operations	1,287,830				1,287,830	1,277,018				1,277,018
b. Audit	11,963				11,963					
2. Boards and Commissions	202,477				202,477	207,923				207,923
3. Law Library	497,146	47,150			544,296	501,972	47,150			549,122
a. Audit		171			171					
4. District Court Operations	5,329,513				5,329,513	5,325,448				5,325,448
5. Water Courts		556,746			556,746		572,748			572,748
a. Audit		1,616			1,616					
Total	7,328,929	605,683			7,934,612	7,312,361	619,898			7,932,259
GOVERNOR'S OFFICE										
1. Office of Budget & Program Planning										
a. Operations	666,698				666,698	708,324				708,324
b. Audit	7,000				7,000	7,000				7,000
c. Statewide Audit				73,750	73,750				73,750	73,750
2. Executive Office Program										
a. Operations	916,796		317,500		1,234,296	931,131		317,502		1,248,633
b. Audit	14,077		1,673		15,750					
3. Board of Visitors	127,455				127,455	128,585				128,585
4. Air Transportation	94,409				94,409	108,635				108,635
5. Mansion Maintenance	60,091				60,091	60,589				60,589
6. Pacific Northwest Electric Power & Conservation Planning Council			433,217		433,217			455,207		455,207
7. Citizens' Advocate Office	47,436				47,436	50,029				50,029
8. Lieutenant Governor	232,602				232,602	236,657				236,657
9. Flathead	39,690				39,690					
10. Coordinator of Aging	39,256				39,256	39,270				39,270
11. Coal Lobby Effort	50,000				50,000	50,000				50,000
Total	2,295,510		752,390	73,750	3,121,650	2,320,220		772,709	73,750	3,166,679

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Item 1c shown in the proprietary fund column is appropriated each year of the biennium from nongeneral fund sources which the Office of Budget and Program Planning shall distribute, for the sole purpose of paying the Legislative Auditor's charges for the statewide audit, to those agencies who derive a benefit from the statewide audit.										
If three FTEs are authorized for the Clark Fork River project, they will be restricted to that project and cannot be transferred to any other program within the Governor's Office.										
The appropriation for the coal lobby effort (item 11) is for the purpose of defending the state's right to establish and levy a tax on coal mined within Montana's borders, to oppose federal legislation that would diminish the state's revenue through discriminatory formula or funding allocations, and to monitor federal actions regarding coal transportation and the Clean Air Act. This appropriation also funds the Legislative Oversight Committee established in HB 828, Laws of 1981. In addition, any balance remaining from item 2(c) of the Governor's Office appropriations contained in HB 447 of the 48th Legislature is reappropriated for use in the 1987 biennium. The Governor's Office shall report quarterly on the coal lobby effort to the Revenue Oversight Committee.										
SECRETARY OF STATE										
1. Records Management										
a. Operations	889,775	263,600			1,153,375	854,273	161,700			1,015,973
b. Audit	7,500				7,500					
c. Equipment	2,000				2,000					
2. Administrative Code										
a. Operations	51,600	159,504			211,104	51,600	161,690			213,290
b. Audit		2,500			2,500					
Total	950,875	425,604			1,376,479	905,873	323,390			1,229,263
Item 1c is a biennial appropriation.										
If HB 893 passes, the general fund transfer of $51,600 in the administrative code program is reduced to $36,600 each year of the biennium.										
COMMISSIONER OF POLITICAL PRACTICES										
1. Administration	143,476	1,284			144,760	139,769	1,000			140,769
2. Audit	1,680				1,680					
Total	145,156	1,284			146,440	139,769	1,000			140,769
STATE AUDITOR										
1. Investment Division		255,345			255,345		255,997			255,997
a. Audit		3,696			3,696					
2. Management and Control Program										
a. Operations	349,070				349,070	353,314				353,314
b. Audit	6,300				6,300					
3. Central Payroll Division										
a. Operations	362,072	305,000			667,072	363,893	305,000			668,893
b. Audit	12,789	1,911			14,700					
4. Administrative Support										
a. Operations	359,551				359,551	374,036				374,036
b. Audit	3,864				3,864					
5. Insurance Department										
a. Operations		667,504			667,504		661,777			661,777
b. Audit		9,240			9,240					
c. Nongender Insurance Law		54,563			54,563					

	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Total	1,093,646	1,297,259			2,390,905	1,091,243	1,222,774			2,314,017

Item 5c is a biennial appropriation. The appropriation for item 5c includes a 1.0 FTE to implement the nongender insurance law. The agency is not to include this FTE in its current level budget request presented to the 1987 Legislature.

DEPARTMENT OF JUSTICE

1. Legal Services										
a. Operations	789,736	20,356			810,092	785,461	20,242			805,703
b. Case-Related Travel	10,000				10,000	10,000				10,000
2. County Prosecutor Services	128,754				128,754	130,954				130,954
3. Agency Legal Services				431,375	431,375				430,508	430,508
4. Motor Vehicle Administration		102,155			102,155		102,690			102,690
5. Driver Licensing Program										
a. Operations	1,823,692	244,629			2,068,321	1,826,369	245,791			2,072,160
b. Microfilm Study			20,000		20,000					
6. Highway Patrol										
a. Operations	2,969,511	6,261,568	451,440		9,682,519	3,082,747	6,270,787	481,063		9,834,597
b. Highband Radio		389,750			389,750					
7. Vehicle Registration		1,942,639			1,942,639		1,942,879			1,942,879
8. Law Enforcement Services Administration	80,950				80,950	72,798				72,798
9. County Attorney Payroll	801,948				801,948	832,336				832,336
10. Law Enforcement Telecommunications Program		709,951			709,951		746,158			746,158
11. Law Enforcement Academy		583,610			583,610		592,592			592,592
12. Fire Marshal	343,353				343,353	331,478				331,478
13. Identification Program	244,444				244,444	242,698				242,698
14. Criminal Investigators	152,748		69,231		221,979	154,123		70,292		224,415
a. Case-Related Travel	10,000				10,000	10,000				10,000
b. Undercover Criminal Investigation						308,959				308,959
c. Buy Fund						100,000				100,000
15. Central Services										
a. Operations	350,040	25,000			375,040	352,376	25,000			377,376
b. Audit	11,899	14,576	2,677	595	29,747					
16. Criminal Investigation, Coal Board			265,874		265,874			271,375		271,375
17. Indian Legal Jurisdiction	69,080				69,080	69,476				69,476
a. Legal Fees	400,000				400,000					
18. Data Processing Program	312,337				312,337	315,881				315,881
19. Extradition and Transfer of Prisoners	162,615				162,615	166,797				166,797
20. Forensic Science Division		691,083			691,083		677,608			677,608
Total	8,661,107	10,985,317	809,222	431,970	20,887,616	8,792,453	10,623,747	822,730	430,508	20,669,438

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	Fiscal 1986					Fiscal 1987			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Items 1b, 9, and 14a are line item appropriations.									
Items 5b, 6b, and 17a are biennial appropriations.									
The rate charged by agency legal services (item 3) may not exceed $46.00 per hour.									
The 4.0 FTE Highway Patrol Officers added for the 55 mile per hour enforcement squad will not carry over as current level into the 1989 biennium.									
The portion of the appropriation in item 10 from the state special highway revenue account for the purpose of establishing the regional dispatch center is provided for the 1987 biennium only. The Department of Justice shall develop a cost allocation plan for the purpose of recovering the cost of operation of regional dispatch centers from all user agencies on an equitable basis, and shall submit the funding plan to the 50th Legislature within the Department's 1989 biennium budget request. It is the intent that a direct appropriation from the state special highway revenue account not be used for this purpose.									
If SB 116 passes, item 9 shall be increased by no more than $715,787 general fund in fiscal 1986 and $752,312 general fund in fiscal 1987. If SB 116 is amended and the cost is less than stated in sentence 1, item 9 may be increased only for the fiscal impact of SB 116 as passed and approved.									
HIGHWAY TRAFFIC SAFETY									
1. Operations	70,247	1,485,698		1,555,945		70,691	1,480,936		1,551,627
a. Audit	1,219	1,218		2,437					
Total	71,466	1,486,916		1,558,382		70,691	1,480,936		1,551,627
BOARD OF CRIME CONTROL									
1. Operations	483,905	80,929		564,834	486,084		82,500		568,584
a. Audit	8,245	1,571		9,816					
Total	492,150	82,500		574,650	486,084		82,500		568,584
DEPARTMENT OF REVENUE									
1. Director's Office									
a. Operations	265,340	83,941	2,836	352,117	266,125	86,856		2,836	355,817
b. Audit	70,000	5,000	24,750	99,750					
2. Central Services	870,973	5,000		875,973	874,210		5,000		879,210
3. Research and Information Division	957,533		319,178	1,276,711	959,198			319,733	1,278,931
4. Legal and Investigation Program	813,442	1,429,378	337,212	2,580,032	799,103		1,397,529	328,870	2,525,502
5. Income Tax Division	2,785,839	6,426		2,792,265	2,837,958	6,844			2,844,802
6. Natural Resources and Corporation Tax	1,241,059	56,588 141,572		1,439,219	1,259,445	55,236	139,338		1,454,019
7. Miscellaneous Tax	470,459	68,384		538,843	452,464	71,000			523,464
8. Motor Fuel Division		713,013		713,013		695,232			695,232
9. Property Assessment Division	11,252,843			11,252,843	10,315,236				10,315,236
a. Equipment	193,670			193,670					
b. Airline Litigation	120,000			120,000					
Total	19,041,158	933,352 1,575,950	683,976	22,234,436	17,763,739	915,168	1,541,867	651,439	20,872,213

Item 9a is a biennial appropriation. Item 9b is a biennial appropriation to deal with legal issues arising under federal nondiscriminatory taxation acts such as the Tax Equity and Fiscal Responsibility Act, the Railroad Revitalization and Regulatory Reform Act, and any subsequent federal legislation that directs the state to take a nondiscriminatory posture in the taxation of entities doing business within the state. This appropriation may be used only for attorney fees, expert witnesses, and extraordinary expenses associated solely with resolving disputes related to such legal issues.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Liquor Division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1987 biennium, the Division shall attempt to return at least 13 percent of net sales. Net sales are gross sales less discounts and all taxes collected. The Division shall limit operational expenses of the liquor merchandising system to not more than 15 percent of net sales. Operational expenses may not include product costs, freight charges, or expenses allocable to other divisions or licensing bureau expenses.										
The Division retains full authority to determine store operating hours and the number and location of stores and employees. Nonprofitable or marginally profitable state stores shall be closed or converted to agency stores in an orderly manner. Agency stores shall be closed if the Division considers them marginally profitable and other state stores or agencies are located within a reasonable distance.										
The appropriation for item 4 includes 13 FTE support staff added to the Child Support Bureau. The agency is prohibited from including these 13 FTE in its current level budget request presented to the 1987 Legislature.										
The appropriation for the Income Tax Division includes the additional 19 FTE added. These FTE include 4.5 FTE systems development positions, 6.0 FTE audit staff, and 8.5 FTE collection staff. The agency is prohibited from including these 19 FTE in its current level budget request presented to the 1987 Legislature.										
The appropriation for item 6 includes 2 FTE added to the Natural Resources and Corporation Tax Division. These FTE include a 1 FTE natural resources tax auditor and a 1 FTE corporate tax auditor. The agency is prohibited from including these 2 FTE in its current level budget request presented to the 1987 Legislature.										
DEPARTMENT OF ADMINISTRATION										
1. Central Administration										
a. Operations	248,097	41,407	289,504	251,700				41,330		293,030
2. Accounting										
a. Operations	832,156		832,156	844,917						844,917
b. Audit	10,500		10,500							
3. Architecture & Engineering										
a. Operations	523,564	528,864	1,052,428		530,777			530,777		1,061,554
b. Audit	5,300		5,300							
4. General Services										
a. Operations	561,183	2,571,858	3,133,041	569,201				2,713,421		3,282,622
b. Audit		6,500	6,500							
5. Purchasing	513,037		513,037	515,498						515,498
6. Property and Supply		562,444	562,444					592,641		592,641
a. Audit		6,300	6,300							
b. Cost of Goods Sold		3,000,000	3,000,000					3,000,000		3,000,000
7. Mail & Management		226,868	226,868					232,411		232,411
a. Audit		1,000	1,000							
b. Communications		754,338	754,338					861,494		861,494
8. Investments										
a. Operations		758,054	758,054					758,811		758,811
b. Audit		29,500	29,500					29,500		29,500
c. Rent		38,680	38,680					35,691		35,691
9. Communications		7,666,092	7,666,092					8,041,789		8,041,789
a. Audit		3,000	3,000							
b. Contract Services		200,000	200,000							
10. Personnel	891,911		891,911	907,162						907,162
11. Group Benefits	32,000	184,649	216,649	35,145				186,967		222,112
a. Audit		25,300	25,300					25,100		25,100

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
12. Training	30,812			100,868	131,680	31,259			101,755	133,014
a. Audit	250			250	500					
13. State Insurance				1,863,614	1,863,614				1,993,091	1,993,091
a. Audit				3,000	3,000					
14. Passenger Tramway Safety	19,209				19,209		19,753			19,753
15. Workers' Compensation	333,771				333,771		324,789			324,789
a. Audit	1,000				1,000					
b. Veterans' Preference	9,000				9,000		9,000			9,000
c. Meeting Rooms	12,000				12,000		12,000			12,000
16. Publications and Graphics				1,705,460	1,705,460				1,887,151	1,887,151
a. Audit				5,400	5,400					
b. Equipment				150,000	150,000				150,000	150,000
c. Private Vendors Pass Through				2,097,720	2,097,720				2,097,786	2,097,786
17. Information Services Division				7,397,572	7,397,572				7,472,713	7,472,713
a. Audit				27,700	27,700					
18. State Tax Appeal Board										
a. Operations	295,584				295,584	295,491				295,491
b. Contracted Services	30,000				30,000					
19. Treasury Central Services	400,524			27,498	428,022	398,882			27,619	426,501
a. Audit	36,800				36,800					
Total	3,902,063	884,635		29,983,936	34,770,634	3,849,255	896,319		30,780,047	35,525,621

The appropriation in item 3a in the Proprietary column is appropriated from the capital projects fund.

The appropriation in item 4a in the Proprietary column includes $55,356 in fiscal 1986 and $58,801 in fiscal 1987 from the capital projects fund.

Item 8c may be used only in the event the Investment Bureau moves from its existing facilities to more expensive facilities.

Item 9b is a biennial appropriation to hire consultants for a long-term telecommunications proposal.

Item 18b is a biennial appropriation for the "34 percent cases" and appeals resulting from property reappraisals.

Item 16b is for the purchase of copier pool equipment.

Item 16c is to be used only for hiring one FTE to monitor vendor contracts with the state and to pay all vendor printing claims for the state.

Items 6b, 7b, 15b, and 15c are line item appropriations for each year of the biennium.

In item 4, the Department may charge a maximum of $2.98 per square foot in fiscal 1986 and $3.10 per square foot in fiscal 1987. At the end of fiscal 1987, the maximum cash the Department may carry over is $320,000. During the 1987 biennium if utility costs exceed the budgeted amounts, the Department may submit a budget amendment to cover the increase in utility costs.

The Department may expend available self-insurance reserves and revenues to pay any deficit that may be incurred for property or liability insurance premiums due and payable through June 30, 1987.

Included in item 17 is $99,840 in fiscal 1986 and $104,832 in fiscal 1987 for contract programming. The agency is prohibited from including these costs in its current level budget request presented to the 1987 Legislature.

If HB 12 is not passed and approved, the general fund appropriation for fiscal 1986 in item 1a is increased to $12,378,052 and the general fund appropriation for fiscal 1987 in item 1a is increased to $12,442,304.

Contingent upon passage of HB 430, $12,500 in fiscal 1986 and $12,500 in fiscal 1987 are appropriated to the group benefits program of Personnel Division (item 11), in the proprietary fund.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
PUBLIC EMPLOYEES' RETIREMENT DIVISION										
1. Operations				807,048	807,048				786,375	786,375
2. Audit				27,300	27,300					
Total				834,348	834,348				786,375	786,375

The amounts listed in items 1 and 2 are appropriated from the pension trust fund.

TEACHERS' RETIREMENT SYSTEM									
1. Operations			441,759	441,759				406,819	406,819
2. Audit			19,740	19,740					
Total			461,499	461,499				406,819	406,819

The amounts listed in items 1 and 2 are appropriated from the pension trust fund.

DEPARTMENT OF MILITARY AFFAIRS								
1. Administration Program								
a. Operations								
128,427	7,241		135,668	128,870		7,246		136,116
b. Audit								
4,200			4,200					
c. Utilities								
24,650			24,650	25,619				25,619
2. Army National Guard								
653,266	230,901		884,167	671,396		233,864		905,260
a. Utilities								
239,178	159,452		398,630	249,120		166,079		415,199
3. Air National Guard								
41,201	625,597		666,798	41,762		628,184		669,946
a. Utilities								
60,819	243,278		304,097	65,448		261,789		327,237
4. Veterans' Affairs								
470,851			470,851	466,674				466,674
a. Audit								
4,200			4,200					
Total								
1,626,792	1,266,469		2,893,261	1,648,889		1,297,162		2,946,051

If utilities expenditures exceed the amounts appropriated for utilities, the Department may ask for a supplemental appropriation. If utilities do not exceed the amount anticipated for utilities, the difference may be used for energy conservation measures. The amounts in items 1c, 2a, and 3a are appropriated for utilities.

DISASTER AND EMERGENCY SERVICES								
1. Disaster Coordination								
a. Operations								
220,594	267,249		487,843	222,867		252,524		475,391
b. Audit								
2,940	2,940		5,880					
2. Nuclear Civil Protection								
a. Operations								
	270,878		270,878			268,334		268,334
b. Audit								
	2,520		2,520					
Total								
223,534	543,587		767,121	222,867		520,858		743,725

DEPARTMENT OF HIGHWAYS								
1. Construction								
92,515,021	117,728,884		210,243,905		68,100,747	106,475,343		174,576,090
2. Operations								
a. Operations								
5,022,309	2,055,267		7,077,576		5,115,819	2,058,703		7,174,522
b. Audit								
63,000			63,000					
3. Preconstruction								

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
		6,923,512	7,415,892		14,339,404		5,312,307	6,458,655		11,770,962
4. Service Revolving				2,990,034	2,990,034				3,217,861	3,217,861
5. Maintenance		40,497,899			40,497,899		40,360,882			40,360,882
6. Equipment		2,920,903		9,735,463	12,656,366		2,590,751		10,187,263	12,778,014
7. Motor Pool				890,157	890,157				733,999	733,999
8. Stores Inventory		13,050,700			13,050,700		13,309,443			13,309,443
9. Gross Vehicle Weight Division		3,218,080			3,218,080		3,567,560			3,567,560
10. Capital Outlay		14,773,336			14,773,336		16,563,599			16,563,599
Total		178,984,760	127,200,043	13,615,654	319,800,457		154,921,108	114,992,701	14,139,123	284,052,932

In the event additional federal highway funds become available, additional spending authority and additional FTEs may be requested through budget amendment.

The Department shall manage the program with the intent to end the 1987 biennium with approximately a $10 million cash balance in the highway special revenue account in the state special revenue fund.

Funding may be transferred among all programs, including stores inventory, to reflect personal services expenditures.

The Department is appropriated $32,050,000 in fiscal year 1986 and $29,600,000 in fiscal year 1987 for a cash transfer for the highway special revenue account to the highway reconstruction trust account.

The Department of Highways is directed to submit to the 1987 Legislature a construction work plan for the 1989 biennium that is detailed by year, project phase, and fund. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1989 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year, fund, and project phase.

The Legislature anticipates the Department will proceed during the 1987 biennium with the projects and right-of-way acquisitions listed in its revised work plan presented to the legislative subcommittee on general government and highways and spend funds substantially in accordance with the estimated expenditures shown on that work plan. The Department shall report to the 1987 Legislature any significant deviation in projects undertaken or funds expended from that work plan. The Department will be allowed to adjust appropriations in the construction and preconstruction programs between fiscal years and funding sources to reflect actual expenditures related to the projected work plan.

The internal service program contains $210,000 in fiscal year 1987 for overhaul of the Department's airplane. In the event the repair is not required, the Department shall revert this spending authority.

The Legislature anticipates that the Maintenance Division will receive, by budget amendment, spending authority for any funds in excess of $394,098 in fiscal 1986 and $400,073 in fiscal 1987 that it collects from damage situations.

The Department is authorized to transfer $3,700,000 from the highway special revenue account to the stores program account as contributed capital in fiscal 1986. The Department is instructed to develop a pricing structure in the stores inventory program to maintain a cash balance and prepare budgets for the 1989 biennium in accordance with this plan.

TOTAL SECTION A										
49,777,446	196,953,138	133,717,077	46,085,133	426,532,794	48,771,869	171,433,754	121,511,463	47,268,061	388,985,147	

B. HUMAN SERVICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES									
1. Director's Division									
a. Director's Office									
368,121		785,949		1,154,070	365,311		776,214		1,141,525
b. Legal Unit									
104,482				104,482	105,589				105,589
c. Board of Health									
18,638				18,638	18,638				18,638
2. Financial Services Division									
a. Administration									
		145,971		145,971			148,887		148,887
b. Fiscal Bureau									
		311,366		311,366			313,072		313,072
c. Audit									
		42,000		42,000					
d. Records and Statistics Bureau									
234,518	72,269	63,423		370,210	228,158	72,203	63,423		363,784

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
3. Environmental Sciences										
a. Administration	113,645				113,645		113,999			113,999
b. Food & Consumer Safety	328,488	204,000			532,488	330,793	206,000			536,793
c. Solid Waste Management	78,266	1,306,442	2,199,366		3,584,074	78,102	1,397,010	2,811,374		4,286,486
d. Air Quality	320,657		570,391		891,048	320,657		573,258		893,915
e. Occupational Health	172,842		41,072		213,914	172,041		34,084		206,125
f. Water Quality	263,972	81,388	1,296,737		1,642,097	266,531	80,992	1,206,594		1,554,117
i. Cabin Creek			95,000		95,000					
g. Transfer to General Fund		500,000			500,000					
h. LUST		53,063	159,188		212,251					
i. Environmental Quality Protection Fund, EIS, Variance		1,000,000			1,000,000					
4. Management Services Division										
a. Administration	167,781	48,000	26,815		242,596	166,255	51,000	19,892		237,147
b. Microbiology Laboratory	370,950	96,950	49,000		516,900	221,452	151,373	34,000		406,825
c. Contingency Fund		50,000			50,000					
d. Chemistry Laboratory	86,411	200,217			286,628	81,377	171,013			252,390
e. Data Processing			36,213		36,213			33,600		33,600
5. Health Services and Medical Facilities Division										
a. Administration	33,734		33,833		67,567	33,864		33,895		67,759
b. Dental	23,920		118,714		142,634	24,263		107,257		131,520
c. Nursing	194,166		1,334,412		1,528,578	193,335		1,342,558		1,535,893
d. Clinical	120,652		9,501,861		9,622,513	129,581		9,533,533		9,663,114
e. Emergency Medical	295,972	45,172	185,439		526,583	303,656	44,567	204,855		553,078
f. Health Planning and Resource Development	126,401		213,258		339,659	125,435		213,916		339,351
g. Licensing and Certification	250,443		336,374		586,817	250,695		337,149		587,844
Total	3,560,414	3,771,146	17,546,382		24,877,942	3,415,733	2,288,157	17,787,561		23,491,451

The total appropriation for the Department includes $1,874,163 in fiscal 1986 and $1,920,679 in fiscal 1987 of the maternal and child health block grant and $632,157 in fiscal 1986 and $632,061 in fiscal 1987 of the preventive health block grant. To the extent revenues from these grants exceed those amounts, it shall be distributed to the counties. To the extent revenues from these grants are less than these amounts, distributions to the counties shall be reduced.

The Department of Health and Environmental Sciences shall use the Attorney General's legal fee rate to charge federal programs for services performed by the Department of Health and Environmental Sciences, Legal Services Unit. Use of federal appropriation authority of $42,701 in fiscal 1986 and $52,472 in fiscal 1987 shall be used only to purchase legal services from the Department of Health and Environmental Sciences, Legal Services Unit. All legal services performed for federal programs shall be billed and all fees collected shall be deposited to the general fund.

Resource indemnity trust funds allocated to the Department of Health and Environmental Sciences as per section 15-38-202, MCA, received in excess of $376,000 in fiscal 1986 and $435,000 in fiscal 1987 are appropriated for use by the Solid and Hazardous Waste Bureau for the hazardous waste and superfund programs. Any unexpended resource indemnity trust funds appropriated for fiscal year 1986 are reappropriated for fiscal year 1987.

If House Bill 633 is not passed and approved, the state special revenue appropriation for fiscal 1986 in item 3f is increased to $218,175 and the state special revenue appropriation in fiscal 1987 is increased to $220,817.

Items 3fi, 3h, and 3i are biennial appropriations.

Funds appropriated for family planning services are contingent upon the recipient providing such services in a physical plant that does not contain an abortion clinic or facility that performs abortions.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Any federal funds received for the Environmental Sciences Division Administration, item 3a, shall replace resource indemnity trust money, which shall revert to the resource indemnity trust fund.

Item 3g is a transfer of funds from the junk vehicle state special revenue fund to the general fund.

Beginning in fiscal 1987, PKU testing in the microbiology laboratory will be operated solely from fees collected for PKU testing.

Item 4c is for reimbursable laboratory work in excess of $345,167 in fiscal 1986 and $373,386 in fiscal 1987.

No authority may be transferred into or out of item 3i.

DEPARTMENT OF LABOR & INDUSTRY

1. Commissioner's Office			167,010		167,010			166,390		166,390
2. Labor Standards	559,314	3,250			562,564	548,374	3,250			551,624
3. Appeals	305,024		228,517	3,500	537,041	308,308		229,907	3,500	541,715
4. Human Rights	203,318		125,876		329,194	210,787		121,632		332,419
Total	1,067,656	3,250	521,403	3,500	1,595,809	1,067,469	3,250	517,929	3,500	1,592,148
5. Employment Security Division										
a. Job Services			10,637,651		10,637,651			10,728,743		10,728,743
b. Unemployment Insurance			2,606,257		2,606,257			2,605,199		2,605,199
c. Central Services			4,194,753		4,194,753			4,113,527		4,113,527
d. Audit								56,700		56,700
e. Job Training Partnership Act	334,000		7,100,000		7,434,000	334,000		7,100,000		7,434,000
Total	334,000		24,538,661		24,872,661	334,000		24,604,169		24,938,169
6. Workers' Compensation										
a. Operations	100,579	7,252,477	222,118		7,575,174	100,394	7,218,236	221,837		7,540,467
b. Audit		40,000			40,000					
c. Crime Victims Fund		500,000			500,000					
Total	100,579	7,792,477	222,118		8,115,174	100,394	7,218,236	221,837		7,540,467

Item 5a includes federal spending authority for current level operations of all existing job service offices. If federal funds are less than these amounts, the Department may supplement federal funds with state unemployment assessments as provided in section 39-51-404(4), MCA.

Item 6a contains $103,326 in fiscal 1986 and $85,841 in fiscal 1987 of Workers' Compensation funds for an additional 3 FTE legal personnel and expenses. These FTEs are not to be presented as part of the current level budget to the 1987 Legislature.

Item 6c is appropriated to the general fund from the crime victims fund.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1. Assistance Payments										
a. Operations	669,713		2,358,296		3,028,009	678,507		2,392,658		3,071,165
b. Benefits										
i. Nonresident General Assistance	30,000				30,000	30,000				30,000
ii. Emergency General Assistance	100,000				100,000	100,000				100,000
iii. State General Assistance	2,777,906				2,777,906	3,347,068				3,347,068
iv. AFDC	9,731,463		20,542,614		30,274,077	10,233,069		22,054,047		32,287,116
v. Other Benefits	174,701		15,238,563		15,413,264	180,882		14,651,892		14,832,774

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
vi. Legal Services	100,000				100,000	100,000				100,000
Total	13,583,783		38,139,473		51,723,256	14,669,526		39,098,597		53,768,123
2. Social Services										
a. Operations	7,014,163		2,098,297		9,112,460	7,315,840		2,141,454		9,457,294
b. Benefits	5,867,404		6,988,078		12,855,482	6,102,311		7,094,242		13,196,553
c. Legacy Legislature	5,000				5,000					
Total	12,886,567		9,086,375		21,972,942	13,418,151		9,235,696		22,653,847
3. Eligibility Determination	2,028,531		5,054,642		7,083,173	2,092,309		5,320,842		7,414,151
4. Administration and Support										
a. Operations	1,576,381		1,336,309		2,912,690	1,594,114		1,344,281		2,938,395
b. Legislative Audit	62,508		52,992		115,500					
Total	1,638,889		1,389,301		3,028,190	1,594,114		1,344,281		2,938,395
County Assumption - Administration	963,626		362,018		1,325,644	962,009		361,382		1,323,391
5. Medical Assistance										
a. Operations	1,079,895		1,771,702		2,851,597	1,055,230		1,792,221		2,847,451
b. Benefits										
i. State Medical	2,894,772				2,894,772	3,177,525				3,177,525
ii. Medicaid - Institution Reimbursement	4,494,303		8,681,530		13,175,833	4,663,663		9,208,028		13,871,691
iii. Other Benefits	16,164,688		31,701,655		47,866,343	16,699,626		33,199,660		49,899,286
iv. Medicaid - Other	10,649,454	6,527,941	33,185,357		50,362,752	11,261,986	6,593,221	35,253,758		53,108,965
v. Medicaid Management Information System	120,000		1,080,000		1,200,000					
Total	35,403,112	6,527,941	76,420,244		118,351,297	36,858,030	6,593,221	79,453,667		122,904,918
6. Audit and Program Compliance	686,543		681,936		1,368,479	690,224		678,194		1,368,418
7. Vocational Rehabilitation	690,601	541,891	3,956,328		5,188,820	702,317	563,666	4,189,835		5,455,818
a. Special Population Services	20,000		96,000		116,000	20,000				20,000
8. Disability Determination			2,250,917		2,250,917			2,299,399		2,299,399
9. Visual Services	234,314		655,898		890,212	241,788		669,618		911,406
10. Developmental Disabilities										
a. Operations	267,286		832,663		1,099,949	262,886		829,690		1,092,576
b. Benefits	3,273,088		12,661,320		15,934,408	5,750,900		12,174,002		17,924,902
Total	3,540,374		13,493,983		17,034,357	6,013,786		13,003,692		19,017,478
11. DDPAC										
a. Operations			105,000		105,000			105,000		105,000
b. Benefits			195,000		195,000			195,000		195,000
Total			300,000		300,000			300,000		300,000
TOTAL SRS	71,676,340	7,069,832	151,887,115		230,633,287	77,263,254	7,156,887	155,955,203		240,375,344

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	Fiscal 1986					Fiscal 1987				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

It is to be a priority that primary care givers who provide direct service under case management for the Medicaid home and community-based services waiver be acquainted with the mental health needs of the elderly.

Further, case management teams, care givers, and the Aging Services Network are to be acquainted with appropriate means for referral and intervention. Aging information and referral technicians are to be informed of the local services available to address mental health needs.

In each fiscal year, 10% of the low income energy block grant shall be transferred to the social services block grant. If the transfer is greater than $1,169,510 in either fiscal year, a like amount of general fund shall revert. Eight and six-tenths percent of the low income energy block grant shall be used for the weatherization program in each fiscal year.

No funds may be transferred into or out of the nonresident general assistance program, the emergency general assistance program, or the state general assistance program.

Except for 5% in fiscal 1986 and 5% in fiscal 1987 that the Department may use for administrative expenses, all other funds appropriated for the community services block grant must be allocated to the Human Resource Development Councils.

Funds appropriated under item 1bvi are for a contract with the Montana Legal Services Corporation to provide legal assistance to all supplemental security income clients, with the intent of reducing the state general assistance caseload by a minimum of 180 clients by the end of the 1987 biennium.

If third-party payments or reimbursement from any source received by the Department to offset costs of the foster care program are in excess of $320,000 in fiscal 1986 or $320,000 in fiscal 1987, these excess payments shall revert to the general fund.

The Department may not consider donated or nondepartmental contracted funds obtained by developmental disabilities providers or foster care providers when allocating or contracting state payments for developmental disabilities services or foster care services.

No FTE or spending authority may be transferred into or out of the eligibility determination program or the disability determination program.

Item 4b is a biennial appropriation.

The Department may provide coverage of heart transplant surgery under the medicaid-other program. This coverage shall expire on June 30, 1987, unless specifically extended by the next Legislature.

Except as provided for coverage of heart transplant surgery as set forth in this narrative, the Department shall not expand or reduce the amount, scope, or duration of the benefits available to recipients under the medicaid-other program during the 1987 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation. This provision does not prohibit the Department from amending reimbursement procedures to contain costs providing there are no reductions in the types of services provided to recipients or increases in the amount paid by recipients under copayment rules.

No funds may be transferred out of item 5bii.

If collections of county mill levy funds from state-assumed counties exceed $6,527,941 in fiscal 1986 and $6,593,221 in fiscal 1987, the excess will be deposited to the general fund.

Item 5bv is a biennial appropriation.

Item 7a is a biennial appropriation.

Funds appropriated under item 10b include $2,890,123 for reduction of the developmental disabilities waiting list. The Department shall adopt as a priority development of residential services for autistic children.

Funds appropriated under item 11b must be expended for direct services in accordance with recommendations of the Developmental Disabilities Planning and Advisory Council.

TOTAL SECTION B									
76,738,989	18,636,705	194,715,679	3,500	290,094,873	82,180,850	16,666,530	199,086,699	3,500	297,937,579

C. NATURAL RESOURCES

PUBLIC SERVICE COMMISSION									
1. Operations									
1,651,873		46,628	15,000	1,713,501	1,711,671		50,919	15,000	1,777,590
2. Audit									
11,500				11,500					
3. Pipeline Consultants									
15,000		15,000		30,000					
4. Expert Witnesses									
20,000				20,000					

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Total	1,698,373		61,628	15,000	1,775,001	1,711,671		50,919	15,000	1,777,590

The appropriations in items 3 and 4 are for the biennium.

DEPARTMENT OF LIVESTOCK

1. Central Services										
a. Operations	46,926	349,211			396,137	61,813	350,276			412,089
b. Audit	14,700				14,700					
2. Diagnostic Laboratory	329,908	435,642			765,550	327,689	355,431			683,120
3. Disease Control		570,424			570,424		578,568			578,568
4. Milk and Egg Program	208,876		18,000		226,876	214,447		18,000		232,447
5. Inspection and Control										
a. Operations		1,916,014			1,916,014		1,930,523			1,930,523
b. Market Office Computer Terminals		31,292			31,292					
6. Beef and Pork Research & Marketing			570,000		570,000			570,000		570,000
7. Predatory Animal Control		301,444			301,444		308,227			308,227
8. Rabies Control	67,989	15,000			82,989	68,841	15,000			83,841
Total	668,399	3,619,027	588,000		4,875,426	672,790	3,538,025	588,000		4,798,815

Item 5b is a biennial appropriation.

The appropriation in item 2 in fiscal 1986 includes $27,600 from the state special revenue fund for milk control authorized in section 81-23-202, MCA. The assessment authorized in section 81-23-202, MCA, in effect July 1, 1985, will not be reduced until this expenditure has been made. This amount has been generated under the provisions of section 81-23-105, MCA, for milk testing. This is to assist in the purchase of milk testing equipment authorized in this appropriation.

DEPARTMENT OF AGRICULTURE

1. Centralized Services										
a. Operations	273,854	533,036	72,375	29,168	908,433	268,727	553,541	54,918	27,864	905,050
b. Audit	19,950				19,950					
2. Hail Insurance				168,905	168,905				170,720	170,720
3. Wheat Research and Marketing			1,017,850		1,017,850			1,020,428		1,020,428
4. Environmental Management	712,396	165,467	197,657		1,075,520	693,461	164,284	222,760		1,080,505
5. Plant Industry	432,596	380,900	24,773	43,895	882,164	440,484	391,237	24,785	45,872	902,378
6. Agriculture Development Division	101,208	37,054	101,995	165,899	406,156	97,655	37,633	43,455	170,166	348,909
Total	1,540,004	1,116,457	1,414,650	407,867	4,478,978	1,500,327	1,146,695	1,366,346	414,622	4,427,990

Within proprietary funds appropriated to the Department of Agriculture are revenues received under the provisions of section 80-2-221, MCA, for hail insurance and section 80-2-103, MCA, for rural development. Amounts included are:

		Fiscal 1986	Fiscal 1987
Section 80-2-221, MCA	Item 1a.	$ 23,067	$ 21,030
	Item 2.	168,905	170,720
Section 80-2-103, MCA	Item 1a.	$ 4,101	$ 4,834
	Item 6.	65,899	65,166

The general fund loan authorized for the establishment of the beginning farm loan program in HB 447 of the 48th Legislature is extended until June 30, 1987.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
DEPARTMENT OF STATE LANDS										
1. Central Management										
a. Operations	815,457	470,557	170,000	154,257	1,610,271	817,013	399,546	170,000	185,878	1,572,437
b. Audit	20,790	1,134	3,276		25,200					
2. Reclamation		1,438,007	7,560,562		8,998,569	601,612	768,346	8,063,957		9,433,915
3. Land Administration										
a. Operations	445,250				445,250	432,804				432,804
b. Land Use Specialists	111,313				111,313	76,485				76,485
4. Resource Development		856,889			856,889		926,571			926,571
5. Forestry	4,101,262	2,001,487	1,605,602		7,708,351	4,825,985	1,291,387	1,587,112		7,704,484
Total	5,494,072	4,768,074	9,339,440	154,257	19,755,843	6,753,899	3,385,850	9,821,069	185,878	20,146,696

The funds appropriated in item 3b may be expended only to the extent revenues from increased land transaction fees authorized in section 77-1-302, MCA, are deposited to the general fund.

Item 5 contains $3,012,116 in fiscal 1986 and $2,992,162 in fiscal 1987 for fire protection.

The Department may transfer up to $359,254 in fiscal 1986 and $395,388 in fiscal 1987 of the state special revenue appropriation in item 4 to item 5. These are resource development funds which may be used to expand the timber harvest on state lands.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS									
1. Centralized Services									
a. Operations	1,675,350	253,006	1,899,687	3,828,043		1,587,594	251,597	1,937,999	3,777,190
b. Audit	46,200			46,200					
c. Legislative Contract Authority		40,000		40,000			40,000		40,000
2. Field Services Division									
a. Operations	1,093,308	299,115		1,392,423		1,003,939	297,990		1,301,929
b. Legislative Contract Authority		45,000		45,000			45,000		45,000
c. Data Processing		60,369		60,369					
3. Fisheries									
a. Operations	2,796,028	995,333		3,791,361		2,749,462	974,180		3,723,642
b. Legislative Contract Authority		1,247,000		1,247,000			1,201,000		1,201,000
4. Law Enforcement									
a. Operations	3,762,333			3,762,333		3,747,185			3,747,185
b. Legislative Contract Authority		84,000		84,000			84,000		84,000
5. Wildlife									
a. Operations	2,594,704	2,185,349		4,780,053		2,609,394	2,192,134		4,801,528
b. Legislative Contract Authority		1,015,000		1,015,000			978,000		978,000
6. Parks Program									
a. Operations	412,330	2,878,088	501,500	269,542	4,061,460	433,553	2,618,581	501,500	255,305	3,808,939
b. Operations — Contingency	50,000			50,000		50,000			50,000
7. Conservation Education									
a. Operations	1,063,503	82,269		1,145,772		1,055,079	75,313		1,130,392
b. Legislative Contract Authority		30,000		30,000			30,000		30,000

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
8. Administration										
a. Operations		912,290	184,004		1,096,294		699,705	182,979		882,684
b. Legislative Contract Authority			15,000		15,000			15,000		15,000
Total	412,330	16,871,804	7,036,945	2,169,229	26,490,308	433,553	16,120,939	6,868,693	2,193,304	25,616,489

The appropriation of legislative contract authority in items 1c, 2b, 3b, 4b, 5b, 7b, and 8b is subject to the following provisions:

1. Legislative contract authority applies only to federal and private funds.

2. Legislative contract authority expenditures must be reported on state accounting records separately from current level operations.

3. A report shall be submitted by the Department to the Legislative Fiscal Analyst following the end of fiscal 1986 and following the end of fiscal 1987, which report must include the following:

a. a description of the additional services provided by each grant of federal or private funds;

b. an evaluation of the effectiveness of the additional services relating to each grant.

Item 2c is a biennial appropriation.

Item 6b is appropriated for operation and maintenance of state parks if the Kleffner Ranch is not approved in HB 928. If the Kleffner Ranch is approved in HB 928 this appropriation is void.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1. Centralized Services									
a. Operations	1,164,833	349,558	170,000		1,684,391	1,049,404	350,069	170,000	1,569,473
b. Audit	13,524	7,476			21,000				
2. Oil & Gas									
a. Operations		903,904			903,304		903,259		903,259
b. Additional Travel		2,500			2,500		5,000		5,000
c. Litigation - MEPA		25,000			25,000				
3. Conservation Districts		832,334	2,607		834,941	355,560	488,650	2,703	846,913
4. Water Resources									
a. Operations	2,891,145	1,689,250	42,800		4,623,195	3,650,209	940,455	42,800	4,633,464
b. State Water Projects		800,000			800,000				
c. Debt Service and Issuance Fees		7,356,628	43,880		7,400,508				
d. Middle Creek			4,100,000		4,100,000				
e. Cooney Dam		75,000			75,000				
f. Dam Safety	16,000				16,000	30,000			30,000
g. Board of Water Well Contractors		37,012			37,012		36,432		36,432
5. Energy Division									
a. Operations	466,165	3,428,718	2,866,837		6,761,720	467,401	3,263,000	966,020	4,696,421
b. Lake Broadview Mitigation			113,000		113,000				
Total	4,551,667	15,507,380	7,339,124		27,398,171	5,552,574	5,986,865	1,181,523	12,720,962

Item 2b is appropriated contingent upon filling all inspector positions.

Item 2c is a biennial appropriation.

The Oil and Gas Conservation Division is authorized to spend any funds received from bonds for plugging abandoned wells as authorized in section 82-11-123(5), MCA, and such funds are appropriated for those purposes.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Items 4b, 4c, 4d, and 4e are biennial appropriations. To the extent funds appropriated in item 4e are not needed for the Cooney Dam project, they shall be applied to reduce the water users' debt on this project.

Item 4f is a biennial appropriation to fund Department responsibilities under SB 369.

Item 5b for the Lake Broadview mitigation project is appropriated for the biennium.

DEPARTMENT OF COMMERCE										
1. Business Licensing and Regulation - Program Support										
	21,478	61,129			82,607	21,013	59,805			80,818
2. Weights and Measures Bureau										
	469,746				469,746	434,675				434,675
3. Financial Division										
		773,993			773,993		758,070			758,070
4. Milk Control Bureau										
a. Operations										
		266,610			266,610		261,905			261,905
b. Expert Witnesses										
		6,000			6,000		6,000			6,000
5. Professional and Occupational Licensing										
		2,313,135			2,313,135		2,198,756			2,198,756
6. Aeronautics Division										
		600,116		92,600	692,716		584,316		92,978	677,294
7. Transportation Division										
	503,088	75,000	6,314,749		6,892,837	489,613	75,000	2,827,434		3,392,047
8. Business Assistance										
	735,562		126,500		862,062	730,858		126,500		857,358
9. Montana Promotion										
	1,258,200		325,000		1,583,200	1,243,964		350,000		1,593,964
10. Housing Division										
			8,292,600	1,123,755	9,416,355			8,296,450	1,253,984	9,550,434
11. Community Development										
	206,505	504,000	7,797,446		8,507,951	202,127	470,448	6,265,516		6,938,091
12. Hard-Rock Mining Board										
		1,000,000			1,000,000					
13. Local Government Block Grant										
	1,500,000	15,459,000			16,959,000	1,500,000	15,883,000			17,383,000
14. Coal Board										
		3,115,980			3,115,980		2,957,671			2,957,671
15. Economic Policy and Research										
	249,641		20,000		269,641	247,465		20,000		267,465
16. Local Government Audit Service										
a. Operations										
	88,127			919,842	1,007,969	87,745			901,718	989,463
b. District Court Assistance										
	1,375,000				1,375,000					
17. Accounting and Management										
	87,589			280,171	367,760	87,117			273,879	360,996
18. Indian Affairs Coordinator										
	108,207				108,207	106,773				106,773
19. Bonding Authority										
	193,248			318,653	511,901	187,540			318,234	505,774
20. Director's Office Management Services										
a. Operations										
	1,731			644,288	646,019	1,731			606,815	608,546
b. Audit										
				63,000	63,000					
21. Legal Services Division										
	131,938			169,041	300,979	128,716			164,818	293,534
22. Building Codes Division										
		1,151,533			1,151,533		978,158			978,158
a. Audit										
		3,000			3,000					
Total										
	6,930,060	25,329,496	22,876,295	3,611,350	58,747,201	5,469,337	24,233,129	17,885,900	3,612,426	51,200,792

The interentity loan of $10,000 to the Board of Private Investigation may be extended until June 30, 1987.

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	Fiscal 1986					Fiscal 1987				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

The general fund appropriations in item 7 include $100,000 per year for litigation cost on McCarty Farms/Staggers 229. The Department shall seek to recover the general fund expenditures plus interest at a rate of 10% from any settlement in this case.

The appropriation in item 12 is for the biennium.

Understanding that education of enforcement personnel and enforcement will be an extremely important need in the success of an energy code enforcement program and the exact needs will not be known until after the administrative hearings process for the energy code adoption is completed, the necessary funding may be added by budget amendment. The budget amendment will be for the purposes of allowing the Department to receive and expend federal funds made available for educational and enforcement purposes and the necessary supervisory staff to administer the same. Should the economy improve to the point there is a need for more building standard inspectors, a maximum of 3 FTEs and operating expenses and equipment for the 3 FTEs may be added by budget amendment to the Building Codes Division.

The Department of Commerce is authorized to expend funds deposited to the state special revenue account as a result of House Bill 295, the "Lemon Law".

TOTAL SECTION C									
21,294,905	67,212,238	48,656,082	6,357,703	143,520,928	22,094,151	54,411,503	37,762,450	6,421,230	120,689,334

D. DEPARTMENT OF INSTITUTIONS

CENTRAL OFFICE									
1. Director's Office									
a. Operations									
385,599				385,599	379,484				379,484
b. Workers' Compensation									
					172,000				172,000
2. Management Services Division									
a. Management Services									
881,915				881,915	886,627				886,627
b. Audit									
28,035	875	6,090		35,000					
3. Alcohol & Drug Abuse Division									
219,592	330,039	1,114,606		1,664,237	219,592	344,383	1,083,560		1,647,535
4. Corrections Division									
a. Central Office									
i. Operations									
3,981,236	250	2,595		3,984,081	4,027,276	250	2,699		4,030,225
ii. Equipment									
100,000				100,000					
b. Women's Corrections									
i. Operations									
686,014				686,014	694,102				694,102
c. Corrections Medical									
i. Operations									
607,934				607,934	626,172				626,172
d. Mountain View School									
i. Operations									
1,563,331	2,000	65,586		1,630,917	1,574,168	2,000	65,764		1,641,932
ii. Audit									
10,000				10,000					
e. Pine Hills School									
i. Operations									
2,667,303	41,455	486,856		3,195,614	2,680,399	41,467	487,555		3,209,421
ii. Audit									
13,000				13,000					
f. Montana State Prison									
i. Care and Custody — Operations									
10,528,932	50,617	105,284		10,684,833	11,592,121	50,637	90,996		11,733,754
ii. Care and Custody — Audit									
17,132		1,015		18,147					
iii. Care and Custody — Equipment									
80,000				80,000					
iv. Ranch and Dairy Operations									
			1,745,190	1,745,190				1,789,187	1,789,187
v. Ranch and Dairy Audit									
			2,105	2,105					
vi. Industries Operations									
			396,128	396,128				404,598	404,598
vii. Industries Audit									
			3,193	3,193					
viii.Industries Training Operations									

	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
	156,762		37,243	195,995	390,000	145,487			181,657	327,144
ix. Industries Training Audit	320		80	400	800					
x. Canteen Operations		360,435			360,435		361,031			361,031
xi. Canteen Audit		321			321					
xii. License Plate Factory Operations		354,094			354,094		366,598			366,598
xiii. License Plate Factory Audit		184			184					
g. Swan River Forest Camp										
i. Operations	847,039	73,773	37,525		958,337	838,862	74,284	39,450		952,596
ii. Audit	8,000				8,000					
5. Mental Health Division										
a. Central Office										
i. Operations	4,122,606		1,349,118		5,471,724	4,236,539		1,235,176		5,471,715
b. Boulder River School and Hospital										
i. Operations	10,774,551	33,844	51,769		10,860,164	10,842,541	20,324	43,827		10,906,692
ii. Audit	20,000				20,000					
iii. Equipment	20,000				20,000					
c. Center for the Aged										
i. General Operations	2,510,226	7,386			2,517,612	2,504,802	7,735			2,512,537
ii. Audit	10,000				10,000					
d. Eastmont										
i. General Operations	2,070,704	3,000			2,073,704	2,080,897	3,000			2,083,897
ii. Audit	10,000				10,000					
e. Veterans' Home										
i. General Operations	452,980	20,764	1,384,015		1,857,759	476,719	20,764	1,393,515		1,890,998
ii. Audit	8,000				8,000					
iii. Boiler Replacement	24,995				24,995					
f. Montana State Hospital										
i. General Operations	17,728,908	1,692,998	5,103		19,427,009	17,884,144	1,686,132	5,103		19,575,379
ii. Audit	26,872	2,528			29,400					
iii. Equipment	130,000				130,000					
g. Montana Youth Treatment Center										
i. General Operations	2,084,969		30,113	28,065	2,143,147	2,442,087		41,555	28,065	2,511,707
ii. Audit	10,000				10,000					

Item 1b is appropriated to the Department for additional workers' compensation costs anticipated in fiscal 1987. The director may allocate these funds to programs only for additional workers' compensation costs based on increased rates.

Within item 4, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the Governor or his designated representative.

Within item 5, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the Governor or his designated representative.

Items 4aii, 4ci, 4fiii, 5biii, 5eiii, and 5fiii are biennial appropriations.

The Department is authorized to maintain an aggregate funding level of $2,236,595 during fiscal 1986 and $2,236,595 during fiscal 1987 for those substance abuse programs that during fiscal 1984 were partially or totally funded under the provisions of section 53-24-206, MCA. Expenditures of revenues available under section 53-24-206, MCA, when combined with discretionary distribution of the alcohol federal block grant, may not exceed the aggregate funding totals specified above.

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
6. Board of Pardons										
a. General Operations	165,154				165,154	166,181				166,181
b. Audit	2,520				2,520					
Total	167,674				167,674	166,181				166,181
TOTAL SECTION D	62,954,629	2,974,563	4,676,998	2,371,076	72,977,266	64,470,200	2,978,605	4,489,200	2,403,507	74,341,512

E. OTHER EDUCATION

BOARD OF PUBLIC EDUCATION										
1. Board Administration										
a. Operations	104,979				104,979	103,933				103,933
b. Audit	2,520				2,520					
Total	107,499				107,499	103,933				103,933
2. Fire Services Training School										
a. Operations	230,759		14,000	3,000	247,759	231,868		2,000	3,000	236,868
Total	230,759		14,000	3,000	247,759	231,868		2,000	3,000	236,868
3. Montana School for the Deaf & Blind										
a. Administration	173,882				173,882	174,761				174,761
b. General Services	310,406				310,406	314,914				314,914
c. Student Services	604,154		30,000		634,154	606,168		30,000		636,168
d. Education	924,350		452,494		1,376,844	942,150		427,500		1,369,650
e. Audiological Services	673,000				673,000	673,000				673,000
f. Audit	17,500				17,500					
Total	2,703,292		482,494		3,185,786	2,710,993		457,500		3,168,493

No administrative costs may be taken from item 3e for the Montana School for the Deaf and Blind. Amounts in item 3e represent a biennial appropriation.

In addition to the amount in item 3e, any balance remaining on June 30, 1985, from the general fund appropriation for audiological services contained in HB 447, Laws of 1983, is reappropriated until June 30, 1987, for the purpose of providing audiological testing services.

OFFICE OF PUBLIC INSTRUCTION										
1. Chief State School Officer	112,375		29,102		141,477	113,696		19,071		132,767
2. Basic Skills	914,677	261,454	103,000		1,279,131	886,512	265,371	104,000		1,255,883
3. Vocational Education	408,192		357,217		765,409	413,928		348,097		762,025
4. Administrative Services										
a. General Operations	829,758	495,166	669,994		1,994,918	845,820	493,238	683,089		2,022,147
b. Audit	33,600				33,600					
5. Special Services	135,981		1,341,647		1,477,628	136,314		1,294,839		1,431,153
6. School Transportation	6,086,000				6,086,000	6,086,000				6,086,000
7. School Lunch	640,000				640,000	655,000				655,000
8. Gifted and Talented Grants	100,000				100,000	100,000				100,000

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	Fiscal 1986					Fiscal 1987			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
9. Secondary Vocational Education	1,000,000				1,000,000					
10. Adult Basic Education		148,535			148,535		155,962			155,962
11. Special Education	28,011,800				28,011,800	28,801,733				28,801,733
12. Special Education Contingency	400,000				400,000	400,000				400,000
13. State Impact Payments	13,000				13,000	13,000				13,000
14. Discretionary Grants										
a. Job Training Partnership			500,000		500,000			540,000		540,000
b. Vocational Education Grants			2,500,000		2,500,000			2,500,000		2,500,000
c. Adult Basic Education Grants			403,412		403,412			405,879		405,879
d. Education of the Handicapped — Part B			330,000		330,000			350,000		350,000
e. Education of the Handicapped — Part D			35,000		35,000			40,000		40,000
f. Preschool Incentive Grants			118,000		118,000			129,000		129,000
Total	38,685,383	905,155	6,387,372		45,977,910	38,452,003	914,571	6,413,975		45,780,549

All revenues received in the state traffic education account under the provisions of section 20-7-504, MCA, are appropriated to be distributed as provided in section 20-7-506, MCA.

The appropriations in items 4b and 9 are for the biennium.

State and federal funds appropriated in items 1 through 5 include internal transfers of indirect costs. The amount of indirect costs in excess of $445,666 in fiscal 1986 and $443,738 in fiscal 1987 that are recovered shall cause a like reversion of general fund.

Special education funds in item 11 are for foundation and permissive support of the maximum-budget-without-a-vote for special education.

Special education contingency funds in item 12 are for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting to the Superintendent of Public Instruction, for each child, a child-study team report and an individual education plan relating to this unforeseen expense and a current listing of program, case loads, and related costs. The contingency appropriation is for the biennium, and the specific amounts may be transferred between fiscal years.

Notwithstanding other provisions of law, the Superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds $57,613,533 in the 1987 biennium.

	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
BILLINGS VOCATIONAL-TECHNICAL CENTER						
1. Instruction	545,390	471,500	1,016,890	547,442	474,558	1,022,000
2. Plant Operation & Maintenance	140,432	140,432	280,864	144,795	144,795	289,590
3. Equipment	24,362	24,362	48,724	33,359	17,962	51,321
4. Support						
a. Operations	120,396	271,123	391,519	70,581	322,843	393,424
b. Audit	8,000	10,000	18,000			
Total	838,580	917,417	1,755,997	796,177	960,158	1,756,335

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be $20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is $127,612 in fiscal 1986 and $128,910 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Billings Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

BUTTE VOCATIONAL-TECHNICAL CENTER

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	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
1. Instruction	442,896	382,954	825,850	444,563	385,437	830,000
2. Plant Operation & Maintenance	82,289	82,288	164,577	85,302	85,301	170,603
3. Equipment	7,055	7,055	14,110	9,711	5,229	14,940
4. Support						
a. Operations	260,361	91,365	351,726	226,898	126,474	353,372
b. Audit	8,000	10,000	18,000			
Total	800,601	573,662	1,374,263	766,474	602,441	1,368,915

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be $20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is $121,613 in fiscal 1986 and $121,613 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Butte Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER

1. Instruction	451,610	390,160	841,770	453,306	392,694	846,000
2. Plant Operation & Maintenance	94,367	94,367	188,734	96,911	96,910	193,821
3. Equipment	22,866	22,866	45,732	31,299	16,854	48,153
4. Support						
a. Operations	237,136	137,889	375,025	195,341	181,502	376,843
b. Audit	8,000	10,000	18,000			
Total	813,979	655,282	1,469,261	776,857	687,960	1,464,817

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be $20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is $121,010 in fiscal 1986 and $121,221 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Great Falls Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

HELENA VOCATIONAL-TECHNICAL CENTER

1. Instruction	715,467	597,933	1,313,400	707,040	612,960	1,320,000
2. Plant Operation & Maintenance	158,772	158,771	317,543	168,996	158,995	327,991
3. Equipment	26,895	26,895	53,790	36,845	19,840	56,685
4. Support						
a. Operations	424,133		424,133	375,607	50,612	426,219
b. Audit	7,000	10,000	17,000			
Total	1,332,267	793,599	2,125,866	1,288,488	842,407	2,130,895

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be $20,000 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is $106,295 in fiscal 1986 and $107,743 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Helena Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

MISSOULA VOCATIONAL-TECHNICAL CENTER

1. Instruction	636,186	549,854	1,186,040	638,577	553,423	1,192,000
2. Plant Operation & Maintenance	150,934	150,934	301,868	156,570	156,569	313,139
3. Equipment	25,807	25,807	51,614	35,348	19,033	54,381
4. Support						

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	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
a. Operations	81,977	345,235	427,212	30,787	398,562	429,349
b. Audit	7,000	10,000	17,000			
Total	901,904	1,081,830	1,983,734	861,282	1,127,587	1,988,869

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be $20,000 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is $327,807 in fiscal 1986 and $326,987 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Missoula Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

Receipt of state funds appropriated to the five vocational-technical centers is contingent upon each county in which the center resides levying 1.5 mills each fiscal year. The Superintendent of Public Instruction may transfer millage collections among centers. Millage received by the centers from the 1.5 mill levy which, in the aggregate, exceeds $855,233 in fiscal 1986 and $868,314 in fiscal 1987 will cause a general fund reversion of a like amount each year.

	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
STATE COUNCIL FOR VOCATIONAL EDUCATION										
1. Operations			113,410		113,410			116,350		116,350
2. Audit			2,940		2,940					
Total			116,350		116,350			116,350		116,350
MONTANA ARTS COUNCIL										
1. Administration	56,887		69,587		126,474	57,306		70,875		128,181
2. Audit	4,200		4,200		8,400					
3. Grants	20,000		171,348		191,348	20,000		128,171		148,171
4. Special Projects	39,370		190,465		229,835	38,994		192,451		231,445
Total	120,457		435,600		556,057	116,300		391,497		507,797
MONTANA HISTORICAL SOCIETY										
1. Administration										
a. Operations	352,902		69,245		422,147	390,023		71,221		461,244
b. Audit	12,264				12,264					
2. Library Program	149,518		76,098		225,616	150,186		33,633		183,819
3. Museum Program	219,011		109,075		328,086	221,408		109,057		330,465
4. Publications Program										
a. Operations	41,083			358,905	399,988	41,224			359,595	400,819
b. Audit				1,008	1,008					
5. Historical Sites Preservation Program										
a. Operations	72,777		742,253		815,030	73,836		758,505		832,341
b. Audit	1,764		1,764		3,528					
6. Archives Program	206,893		62,462		269,355	208,395		17,764		226,159
7. Education Program	24,414		64,707		89,121	28,168		65,042		93,210
Total	1,080,626		1,125,604	359,913	2,566,143	1,113,240		1,055,222	359,595	2,528,057
MONTANA STATE LIBRARY										

	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
1. Reference and Information	268,474	20,832	90,203		379,509	271,911	21,874	93,816		387,601
2. Library Development	43,542	379,482	401,895		824,919	43,843	383,462	316,464		743,769
3. Institutional Library Services Program	19,613		47,114		66,727	20,222		47,114		67,336
4. Library Services - Physical Handicapped Program	52,877		82,730		135,607	54,041		83,209		137,250
5. Administration Program	98,615		34,717		133,332	99,158		34,717		133,875
6. Technical Services	55,478	47,790	29,072		132,340	54,899	40,839	29,072		124,810
7. Audit	9,000				9,000					
8. Natural Heritage Program		75,000	75,140		150,140					
Total	547,599	523,104	760,871		1,831,574	544,074	446,175	604,392		1,594,641

The amounts included in items 1 through 6 in the Federal Special Revenue column represent Library Services and Construction Act funds that may be transferred between fiscal 1986 and 1987.

Amounts in item 8 represent a biennial appropriation.

TOTAL SECTION E	48,162,946	5,450,049	9,322,291	362,913	63,298,199	47,761,689	5,581,299	9,040,936	362,595	62,746,519

NOTE: The total of state special revenues for section E includes the following amounts of current unrestricted funds:

Fiscal 1986 ——— $4,021,790
Fiscal 1987 ——— $4,220,553

F. HIGHER EDUCATION

All funds, other than plant funds and current unrestricted operating funds, may be spent and are appropriated contingent upon approval by the Board of Regents by July 1 of each year of the comprehensive program budget. The budget must contain detailed revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

Included within current unrestricted funds to the six institutions is the sum of $14,384,000 in fiscal 1986 and $14,669,000 in fiscal 1987 from revenues generated under the provisions of section 20-25-423, MCA. The Department of Revenue shall levy the full six mills as authorized in section 20-25-423, MCA. Revenues received by the University System under the provisions of section 20-25-423, MCA, that exceed $14,384,000 in fiscal 1986 and $14,669,000 in fiscal 1987 must cause a general fund reversion of a like amount each year.

BOARD OF REGENTS										
1. Administration	23,101				23,101	23,465				23,465
COMMISSIONER OF HIGHER EDUCATION										
1. Office Administration										
a. Operations	798,252				798,252	800,633				800,633
b. Audit	7,351				7,351					
2. WAMI	1,428,893	424,742			1,853,635	1,159,865	779,073			1,938,938
3. WICHE - Student Assistance		1,943,900			1,943,900		1,846,300			1,846,300
4. WICHE - Administrative Dues		53,000			53,000		56,000			56,000
5. University of Minnesota - Rural Dentistry	129,600				129,600	133,200				133,200
6. SSIG	175,000		210,000		385,000	175,000		210,000		385,000
7. NDSL	60,000				60,000	60,000				60,000
8. Talent Search										
a. Operations										

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	Fiscal 1986					Fiscal 1987				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
			165,003		165,003			165,472		165,472
b. Audit			469		469					
9. Guaranteed Student Loan										
a. Operations			1,131,267		1,131,267			1,195,119		1,195,119
b. Audit			1,680		1,680					
10. Work Study	291,000				291,000	291,000				291,000
Total	2,890,996	2,421,642	1,508,419		6,820,157	2,619,698	2,681,373	1,570,591		6,871,662

The Commissioner of Higher Education is allowed to transfer appropriation authority between the amounts included in the WICHE appropriation for dentistry, of $75,600 in fiscal 1986 and $85,100 in fiscal 1987, and the Minnesota Rural Dentistry appropriation, of $129,600 in fiscal 1986 and $133,200 in fiscal 1987.

	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
COMMUNITY COLLEGES						
1. Miles Community College						
a. Operations	862,335		862,335	871,262		871,262
b. Audit	8,320		8,320			
2. Dawson Community College						
a. Operations	743,392		743,392	751,088		751,088
b. Audit	8,320		8,320			
3. Flathead Community College						
a. Operations	1,579,708		1,579,708	1,596,062		1,596,062
b. Audit	8,320		8,320			
Total	3,210,395		3,210,395	3,218,412		3,218,412

The above appropriation provides 52% of the total unrestricted budgets for the community colleges, which budgets shall be approved by the Board of Regents.

The general fund appropriation for each community college includes 41.6% of the total audit cost. The remaining 58.4% of these costs are to be paid from funds other than those appropriated in items 1 through 3. Audit costs may not exceed $20,000 for each unit for the biennium.

Dawson, Miles, and Flathead Community Colleges are prohibited from including in student enrollment, used in calculating the unrestricted budget referred to in section 20-15-310, MCA, student FTEs from out-of-district centers not approved under Board of Regent Policy 220.1.

BUREAU OF MINES						
1. Research	1,173,331	353,000	1,526,331	1,486,030	53,000	1,539,030
AGRICULTURAL EXPERIMENT STATION						
1. Agricultural Experiment Station	5,971,058	2,327,579	8,298,637	5,942,232	2,417,957	8,360,189
2. U.S. Range Station		895,039	895,039		922,735	922,735
Total	5,971,058	3,222,618	9,193,676	5,942,232	3,340,692	9,282,924
COOPERATIVE EXTENSION SERVICE						
1. Public Service	2,230,609	2,037,594	4,268,203	2,188,660	2,097,506	4,286,166
FORESTRY & CONSERVATION EXPERIMENT STATION						
1. Research	115,118	552,308	667,426	669,578		669,578
MONTANA STATE UNIVERSITY						
1. Instruction						

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	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
	16,445,067	8,802,203	25,247,270	16,056,623	8,878,824	24,935,447
2. Research	370,709	199,613	570,322	371,396	199,982	571,378
3. Public Service	6,565	3,535	10,100	6,618	3,564	10,182
4. Academic Support, Student Services, and Institutional Support	8,136,701	5,316,397	13,453,098	7,863,148	5,847,577	13,710,725
5. Audit	27,300	14,700	42,000			
6. Operation and Maintenance of Physical Plant	3,342,860	1,800,002	5,142,862	3,345,750	1,925,153	5,270,903
7. Scholarships and Fellowships		896,879	896,879		954,922	954,922
Total	28,329,202	17,033,329	45,362,531	27,643,535	17,810,022	45,453,557

The appropriation in item 5 is for the biennium. Total audit costs are estimated to be $84,000 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portion of the reimbursements deposited to the current unrestricted fund at Montana State University exceeds $935,000 each fiscal year of the biennium, the general fund appropriated for that year is reduced a like amount.

UNIVERSITY OF MONTANA

1. Instruction	12,104,759	6,488,562	18,593,321	12,163,452	6,574,641	18,738,093
2. Research		428,813	428,813	281,547	151,602	433,149
a. MONTCLIRC	87,500		87,500	75,500		75,500
3. Public Service	128,632	69,264	197,896	129,520	69,741	199,261
4. Academic Support, Student Services, and Institutional Support	6,744,889	3,898,864	10,643,753	6,546,823	4,373,345	10,920,168
5. Audit	24,570	13,230	37,800			
6. Operation and Maintenance of Physical Plant	3,294,760	1,774,102	5,068,862	3,386,828	1,823,676	5,210,504
7. Scholarships and Fellowships		937,840	937,840		996,102	996,102
Total	22,385,110	13,610,675	35,995,785	22,583,670	13,989,107	36,572,777

The appropriation in item 5 is for the biennium. Total audit costs are estimated to be $75,600 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portion of the reimbursements deposited to the current unrestricted fund at the University of Montana exceeds $400,000 each fiscal year of the biennium, the general fund appropriated for that year is reduced a like amount.

The University of Montana shall charge fees for legal services related to MONTCLIRC. These fees must be deposited into a separate designated fund.

EASTERN MONTANA COLLEGE

1. Instruction	4,382,178	2,359,300	6,741,478	4,321,926	2,398,989	6,720,915
2. Public Service	143,374	77,202	220,576	144,238	77,667	221,905
3. Academic Support, Student Services, and Institutional Support	3,104,652	1,465,176	4,569,828	3,047,472	1,681,948	4,729,420
4. Audit	24,570	13,230	37,800			
5. Operation and Maintenance of Physical Plant	1,264,648	680,964	1,945,612	1,300,043	700,023	2,000,066
6. Scholarships and Fellowships		313,719	313,719		342,954	342,954
Total	8,919,422	4,909,591	13,829,013	8,813,679	5,201,581	14,015,260

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be $50,400 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portion of the reimbursements deposited to the current unrestricted fund at Eastern Montana College exceeds $85,000 each fiscal year of the biennium, the general fund appropriated for that year is reduced a like amount.

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	Fiscal 1986			Fiscal 1987		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
NORTHERN MONTANA COLLEGE						
1. Instruction	2,742,173	1,464,487	4,206,660	2,719,321	1,509,385	4,228,706
2. Public Service	5,920	3,187	9,107	5,978	3,219	9,197
3. Academic Support, Student Services, and Institutional Support	2,008,931	203,295	2,212,226	2,028,264	289,656	2,317,920
4. Audit	20,475	11,025	31,500			
5. Operation and Maintenance of Physical Plant	585,111	315,060	900,171	596,434	321,157	917,591
6. Scholarships and Fellowships		249,568	249,568		272,590	272,590
Total	5,362,610	2,246,622	7,609,232	5,349,997	2,396,007	7,746,004

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be $42,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portion of the reimbursements deposited to the current unrestricted fund at Northern Montana College exceeds $20,000 each fiscal year of the biennium, the general fund appropriated for that year is reduced a like amount.

WESTERN MONTANA COLLEGE						
1. Instruction	1,104,649	589,996	1,694,645	1,090,385	606,038	1,696,423
2. Academic Support, Student Services, and Institutional Support	1,194,208	305,687	1,499,895	1,209,226	356,299	1,565,525
3. Audit	19,500	10,500	30,000			
4. Operation and Maintenance of Physical Plant	434,852	234,151	669,003	457,409	246,297	703,706
5. Scholarships and Fellowships		75,404	75,404		82,630	82,630
Total	2,753,209	1,215,738	3,968,947	2,757,020	1,291,264	4,048,284

The appropriation in item 3 is for the biennium. Total audit costs are estimated to be $40,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 5.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portion of the reimbursements deposited to the current unrestricted fund at Western Montana College exceeds $14,000 in each fiscal year of the biennium, the general fund appropriated for that year is reduced a like amount.

MONTANA COLLEGE OF MINERAL SCIENCE & TECHNOLOGY						
1. Instruction						
a. Instruction Program	2,598,940	1,593,128	4,192,068	2,690,548	1,500,639	4,191,187
b. Phase-Down	362,031		362,031			
2. Research	27,167	14,629	41,796	27,521	14,819	42,340
3. Academic Support, Student Services, and Institutional Support	1,848,881	956,211	2,805,092	1,787,956	1,137,360	2,925,316
4. Audit	23,400	12,600	36,000			
5. Operation and Maintenance of Physical Plant	754,034	406,019	1,160,053	882,778	475,342	1,358,120
6. Scholarships and Fellowships		253,228	253,228		273,073	273,073
Total	5,614,453	3,235,815	8,850,268	5,388,803	3,401,233	8,790,036

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be $48,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent this portio. of the reimbursements deposited to the current unrestricted fund at the Montana College of Mineral Science and Technology exceeds $150,000 in each year of the biennium, the general fund appropriated for that year is reduced a like amount.

The appropriation in item 1b is for the biennium.

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	Fiscal 1986					Fiscal 1987				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
TOTAL SECTION F									
88,977,714	50,838,932	1,508,419		141,325,065	88,684,779	52,261,785	1,570,591		142,517,155

NOTE: The total of state special revenues for section F includes the following amounts of current unrestricted funds:

Fiscal 1986 ——— $48,417,290
Fiscal 1987 ——— $49,580,412

TOTAL STATE FUNDING									
347,906,629	342,065,625	392,596,546	55,180,325	1,137,749,125	353,963,538	303,333,476	373,461,339	56,458,893	1,087,217,246

Section 18. **Effective date.** This act is effective July 1, 1985.

Approved May 13, 1985.

HOUSE BILL NO. 565

AN ACT APPROPRIATING MONEY TO REFURBISH HISTORICAL HIGHWAY MARKERS AND TO ADD HISTORICAL HIGHWAY MARKERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $190,525 of federal general revenue sharing money from the federal special revenue fund to the Montana Historical Society for refurbishment of existing historical highway markers and for addition, as appropriate, of new historical highway markers. The money is appropriated for fiscal years 1985, 1986, and 1987 as follows:

Fiscal year 1985	$ 2,500
Fiscal year 1986	129,010
Fiscal year 1987	59,015

Section 2. **Expenditure authority.** The Montana Historical Society may, to accomplish the project, transfer appropriated funds between and among all 3 fiscal years.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 8, 1985.

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HOUSE BILL NO. 684

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION TO SATISFY THE CLAIM OF VISION QUEST IN THE MATTER OF JAMES ROMERO, NO. 929-J, FIRST JUDICIAL DISTRICT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Administration $64,000 from the general fund to pay all unsatisfied claims of Vision Quest against the State of Montana arising out of the placement of James Romero, No. 929-J, First Judicial District Youth Court proceeding. The Department shall obtain a comprehensive release of all claims, including costs and attorney fees, before payment of the sum appropriated in this section.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1985.

HOUSE BILL NO. 861

AN ACT AUTHORIZING THE ISSUANCE AND SALE OF LONG-RANGE BUILDING PROGRAM GENERAL OBLIGATION BONDS AND APPROPRIATING THE PROCEEDS THEREOF FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1987; PROVIDING FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE BOARD OF REGENTS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Approved budget amendment" means approval by the budget director of a request submitted through the Architecture and Engineering Division of the Department of Administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain

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financing to expand a project with funds which were not available for consideration by the Legislature.

(3) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(4) "Capital projects fund" means the capital projects fund provided for in 17-5-401.

(5) "Other appropriated funds" means all money other than general funds or capital projects funds, including special revenue funds, that accrues under the provisions of law to an agency.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 49th Legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 4. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1987, for the purposes for which originally appropriated.

Section 5. **Appropriation of bond proceeds and other funds.** The following money is appropriated from the capital projects fund and the other appropriated funds to the Department of Administration for the capital projects described in this section, contingent upon the respective authorization and sale of general obligation bonds by the 49th Legislature and the Board of Examiners:

Agency/Program	Capital Projects Fund	Other Appropriated Funds
DEPARTMENT OF FISH, WILDLIFE, AND PARKS		
Fish Hatchery Expansion - Miles City		$4,900,000
Washoe Park Trout Hatchery Repairs - Anaconda		250,000
Upgrade Big Springs Trout Hatchery - Lewistown		300,000

There is appropriated from the capital projects fund to the Board of Regents the sum of $1,400.000 for the purpose of financing the costs of construction and equipping a swimming pool addition to the physical education facility at Western Montana College. This appropriation is contingent upon the authorization and sale of general obligation bonds for the project by the Board of Examiners as authorized by [section 8].

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Section 6. **Planning and design.** The Department of Administration may proceed with the planning and design of capital projects prior to the sale of bonds or the receipt of other appropriated funds. The Department may utilize interaccount loans past 1985 fiscal yearend in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of bond proceeds or other appropriated funds.

Section 7. **Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the Department of Administration may not let such projects for bid until the agency has submitted a financial plan for approval by the Director of the Department of Administration. No such financial plan may be approved by the Director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in this act for that project; or

(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1985-87 long-range building program presented to the 49th Legislature.

Section 8. **Authorization of bonds.** The Board of Examiners is authorized to issue and sell long-range building program general obligation bonds in an amount not exceeding $5,450,000 for the projects described in [section 5][, $1,700,000 for purposes described in House Bill No. 224], and $1,400,000 for the construction of the swimming pool addition to the physical education facility at Western Montana College over and above the amount of long-range building program bonds outstanding on January 1, 1985, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the Board by this section is in addition to any other authorization to the Board to issue and sell long-range building program general obligation bonds.

Section 9. **Agreement with the Department of Fish, Wildlife, and Parks.** For the proceeds of bonds or notes authorized and appropriated by this act for the construction or renovation of fish hatcheries operated by the Department of Fish, Wildlife, and Parks, the Board of Examiners and the Department of Fish, Wildlife, and Parks may enter into an agreement under the terms of which the Department shall pay the State Treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the State Treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the Department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the Department must be made from funds available therefor.

Section 10. **Agreement with the Board of Regents.** For the proceeds of bonds or notes authorized and appropriated by this act for the construction of the swimming facility at Western Montana College, the Board of Examiners and the Board of Regents may enter into an agreement under the terms of which the Regents shall pay the State Treasurer,

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for deposit in accordance with 17-2-101 through 17-2-107, as determined by the State Treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the Regents' payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the Regents must be made from available funds.

Section 11. **Benefit of state.** The agreements made pursuant to sections 9 and 10 are solely for the benefit of the State of Montana and are not enforceable by bondholders or other third-party beneficiaries.

Section 12. **Legislative consent.** The appropriations authorized in this act must be considered as legislative consent for the capital projects contained in this act within the meaning of 18-2-102.

Section 13. **Department of Fish, Wildlife, and Parks — bond payment.** The Department of Fish, Wildlife, and Parks shall transfer to the Department of Administration, prior to the payment date, sufficient funds to retire $5,450,000 of general obligation bonds authorized by the 49th Legislature and issued by the Board of Examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders.

Section 14. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Coordination.** (1) If this act and House Bill No. 12 are both passed and approved, subsection (3) of section 2 of House Bill No. 12 is amended to include a reference to sections 9 and 13 of this act. If House Bill No. 12 is not passed and approved, then the reference to sections 9 and 13 of this act required by this section is void.

(2) If House Bill No. 224 is not passed and approved, the bracketed language contained in section 8 of this act, except the reference to [section 5], is void.

Section 16. **Effective date.** This act is effective on passage and approval.

Approved May 13, 1985.

HOUSE BILL NO. 922

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations for grants.** (1) There is appropriated to the Department of Natural Resources and Conservation the balance in the resource indemnity trust interest account, including any funds remaining unexpended at the end of fiscal year 1985.

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(2) The funds appropriated in this section must be awarded by the Department of Natural Resources and Conservation to the entities listed in section 3 for the described purposes and in the described grant amounts, subject to the conditions described in section 6.

Section 2. **Grant program special revenue account created — revenues — allocation — limitations on appropriations.** (1) There is created a grant program special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the grant program special revenue account all money allocated for appropriation from the resource indemnity trust interest account set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202.

(3) Appropriations may be made from the grant program special revenue account for the following purposes:

(a) grants for designated projects and activities; and

(b) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grant program. There is appropriated $277,000 for these administrative expenses. These expenses may be funded prior to funding of projects.

Section 3. **Approved grant projects.** (1) The Legislature approves the grants listed in subsection (2) to be made in the order of priority as indicated within the following prioritized list of projects and activities. If conditions in section 6 are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or utilized by higher ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific contingencies established for each project and activity are contained within the Department's Montana Legacy Program status report for the 1986-87 biennium.

(2) The following are the grant program prioritized projects and activities:

PROJECT	GRANT AMOUNT
1. DEPARTMENT OF AGRICULTURE Weed Control Trust Fund	$1,000,000
2. MONTANA STATE UNIVERSITY, WATER RESOURCES RESEARCH CENTER Stream Restoration from Placer Mining on Grasshopper Creek	58,266
3. BUREAU OF MINES AND GEOLOGY Field and Office Programs — Groundwater Information Center	75,000

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PROJECT	GRANT AMOUNT
4. ANACONDA-DEER LODGE COUNTY, DEER LODGE VALLEY CONSERVATION DISTRICT, HEADWATERS RESOURCE CONSERVATION AND DEVELOPMENT Anaconda Soil Stabilization and Erosion Control	150,000
5. MONTANA STATE UNIVERSITY, WATER RESOURCES RESEARCH CENTER Stream Restoration — Confederate Gulch and Deep Creek	134,249
6. DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES Hazardous Waste Management Collection and Transfer Project	800,000
7. GOVERNMENT OF BUTTE-SILVER BOW Butte Hill Mining Reclamation	500,000
8. TOOLE COUNTY North Toole County Reclamation Project	298,130
9. GOVERNOR'S OFFICE Clark Fork River Projects	130,000
10. DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, CONSERVATION DISTRICTS DIVISION Reclamation of Streambanks and Adjacent Areas Damaged by Placer Mining	30,000
11. MILE HIGH CONSERVATION DISTRICT Reclamation Techniques for Heavy Metal Contaminated Agricultural Lands	88,400
12. GOVERNOR'S OFFICE Cabin Creek Reference to the International Joint Commission	80,000
13. MONTANA STATE UNIVERSITY, WATER RESOURCES RESEARCH CENTER Environmental Fate of Cyanides and Heavy Metals from Historic Cyanide Leach Operations in the Judith Mountains	20,000
14. DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES Scobey Air Quality Monitoring	15,000
15. MONTANA STATE LIBRARY Natural Resources Information System Natural Heritage Program	225,561

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PROJECT	GRANT AMOUNT
16. CITY OF RED LODGE Coal Miner's Memorial Park Revegetation and Irrigation Project	100,000
17. TRIANGLE CONSERVATION DISTRICT Expanded State Salinity	150,000
18. POWDER RIVER CONSERVATION DISTRICT Powder River Irrigation Water Quality Study	80,000
19. GLEN LAKE IRRIGATION DISTRICT Therriault Creek Syphon Construction	32,000
20. MSU, 49th PARALLEL INSTITUTE Montana/Alberta Milk River Joint Impoundment Assessment under auspices of the Montana-Western Canadian Provinces Boundary Advisory Committee	70,000
21. MONTANA BUREAU OF MINES AND GEOLOGY Williston Basin Reclamation Project	91,870
22. ANACONDA-DEER LODGE COUNTY Sewage Facilities	70,000

Section 4. **Environmental contingency account.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the Governor.

(2) Except as provided in subsection (5), at the beginning of each fiscal year, 5% of the funds appropriated to the department of natural resources and conservation from the resource indemnity trust interest account must be allocated to the environmental contingency account.

(3) Funds are statutorily appropriated[, as provided in section 2 of House Bill No. 12,] from the environmental contingency account upon the authorization of the Governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

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(d) to [fund the environmental quality protection fund provided for in section 2 of House Bill No. 766 or to] take [other] necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) The environmental contingency account may receive no additional allocation for any fiscal year in which the balance in the account exceeds $1,000,000 at the beginning of that fiscal year.

(5) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(6) The Governor shall submit to the Legislature at the beginning of each regular session a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report.

Section 5. **Coordination of fund sources for grant program projects.** A sponsor of a grant program project who has applied for a grant for that project under both the grant program and the Water Development Program or the Renewable Resource Development Program must be funded so that the project sponsor does not receive duplicative funding.

Section 6. **Conditions of grants.** Disbursement of grant funds under this act is subject to the following conditions which must be met by project sponsors:

(1) A scope of work and budget for the project must be approved by the Department of Natural Resources and Conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed and the commitment must be documented.

(3) A project sponsor must show satisfactory completion of conditions described in the recommendations section of the project narrative of the Legacy Program report for the 1986-87 biennium.

(4) An agreement between the Department of Natural Resources and Conservation and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements must be accomplished as considered necessary by the Department of Natural Resources and Conservation to accomplish the purpose of the grant as evidenced from the application to the Department of Natural Resources and Conservation or the proposal to the Legislature.

Section 7. **Limiting future use of funds from resource indemnity trust interest account.** It is the intent of the Legislature that future appropriations from the resource indemnity trust interest account not be made to fund general operating expenses of state agencies.

Section 8. **Future preference for appropriations from the resource indemnity trust interest account.** In evaluating proposals for

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use of funds from the resource indemnity trust interest account during the biennium ending June 30, 1989, preferential consideration must be given to proposals that promote projects or activities that:

(1) relate to reclamation or to mitigation of the environmental impacts of resource extraction;

(2) collect, organize, and retrieve natural resource data in a manner compatible with state data systems;

(3) promote effective hazardous waste management; or

(4) are consistent with 15-38-203 which are recommended by standing or interim legislative committees.

Section 9. **Reversion of funds.** All funds allocated to the grant program special revenue account under this act that are unspent and unencumbered on June 30, 1987, revert to the grant program special revenue account.

Section 10. **Coordination.** If this act and House Bill No. 12 are both passed and approved, subsection (3) of section 2 of House Bill No. 12 is amended to include a reference to section 4 of this act, and the bracketed language in section 4(3) of this act "[, as provided in section 2 of House Bill No. 12,]" is effective. If House Bill No. 12 is not passed and approved, such bracketed language in section 4(3) of this act is void.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Coordination instruction.** If House Bill No. 766 is not passed and approved, the bracketed language in Section 4(3)(d) is void.

Approved May 10, 1985.

HOUSE BILL NO. 928

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1987; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; TO PROVIDE AN EXCEPTION TO THE PROHIBITION ON THE USE OF INMATE LABOR FOR THE CONSTRUCTION OF CERTAIN BUILDINGS BY PROVIDING THAT SUCH LABOR MAY BE USED IN CONSTRUCTING A WAREHOUSE AT THE MONTANA STATE PRISON; AMENDING SECTION 7, HOUSE BILL NO. 833, L. 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of sections 1 through 11 and 13 through 19, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

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(2) "Approved budget amendment" means approval by the budget director of a request submitted through the Architecture and Engineering Division of the Department of Administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds which were not available for consideration by the Legislature.

(3) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(4) "CPF" means the capital projects fund.

(5) "Major maintenance plan" means a 6-year schedule of anticipated major maintenance requirements and costs for the first 2 years of the schedule, developed for each state building, as determined by the Department of Administration. The plan shall include a record of major maintenance performed in the previous biennium.

(6) "Major maintenance" means building maintenance or repair projects that are not needed on an annual or biennial basis or are not the function of the permanent maintenance staff of the agency.

(7) "Other appropriated funds" means money, other than general fund money or capital projects fund money, including special revenue fund money that accrues under the provisions of law to an agency.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 49th Legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 4. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1987, for the purposes for which originally appropriated.

Section 5. **Major maintenance requirements.** For all new construction proposals submitted to the Legislature and for all existing applicable state buildings as determined by the Department of Administration, each agency, in consultation with the Architecture and Engineering Division of the Department of Administration, shall provide a major maintenance plan. This plan shall be submitted by the agency to the Department of Administration by July 1 of each even-numbered year, along with the proposed long-range building program required under 17-7-202.

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Section 6. **Capital projects appropriations.** The following money is appropriated for the indicated capital projects from the indicated sources to the Department of Administration:

Agency/Program	CPF	Other Appropriated Funds	
DEPARTMENT OF ADMINISTRATION			
Building Modifications, 920 Front St., Helena	$ 120,000	$ 88,300	Proprietary
Fire Protection, Capitol Complex	300,278	168,877	
Asbestos Survey and Abatement, Statewide	184,000		
Energy Conservation Retrofit, Statewide		400,000	Federal
DEPARTMENT OF COMMERCE			
Roof Replacement, Yellowstone Airport Terminal		50,000	Proprietary or Federal
BOARD OF PUBLIC EDUCATION			
Roof Replacement, Aspen Hall, School for the Deaf & Blind	67,700		
Renovate Formal Museum, Memorial Building		425,000	Private
DEPARTMENT OF FISH, WILDLIFE, & PARKS			
Construct Two Regional Headquarters		2,575,300	FWP License Fees
Fishing Access Site Improvements		300,000	FWP License Fees
		300,000	Federal
Headquarters Storage Building, Glasgow		30,000	FWP License Fees
Relocate Sign Shop		10,000	Coal Tax Park Acquisition
		30,000	FWP License Fees
Spring Meadow Lake Improvements		62,500	Coal Tax Park Acquisition
		62,500	Federal
Les Mason State Recreation Area Development		180,000	Coal Tax Park Acquisition
		180,000	Federal
Glen Lake State Recreation Area Improvements		45,000	Coal Tax Park Acquisition
		45,000	Federal
Lake Elmo State Recreation Area Improvements		12,000	Coal Tax Park Acquisition
		12,000	Federal and Private
Deep Creek Recreation Area Improvements		150,000	Federal and Private
Boat Facilities Program		299,500	FWP License Fees
		897,500	Federal
Site Improvements Statewide		150,000	Real Estate Trust Earnings
Helena Headquarters Improvements		112,000	FWP License Fees
DEPARTMENT OF HIGHWAYS			
Miscellaneous Maintenance, Highway Facilities, Statewide		750,000	Highway State Special Revenue
Energy Retrofit, Butte Headquarters Complex		225,000	Highway State Special Revenue

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Agency/Program	CPF	Other Appropriated Funds	
North Section Facility, Billings		130,000	Highway State Special Revenue
Construct Maintenance Garages, Statewide		199,000	Highway State Special Revenue
Construct Storage Building, Helena		113,000	Highway State Special Revenue
Construct Sandhouses, Statewide		107,200	Highway State Special Revenue
DEPARTMENT OF INSTITUTIONS			
Roof Replacement, Boulder River School & Hospital and Mountain View	18,500		
Sanitary Sewer Expansion, Montana State Prison	250,000	68,500	Water Development Grant
Sewage Treatment Plant, Swan River Youth Forest Camp		444,100	Water Development Grant
Forensic Building, Montana State Hospital	4,327,013		
Fire Suppression Hood, Canary Kitchen, Boulder River School & Hospital	17,250		
Remodel Cottage 16, Boulder River School & Hospital	33,400		
General Maintenance & Repair, Montana State Hospital	61,470		
Boiler Repairs, Pine Hills & Montana State Hospital	26,100		
New Flooring, Pine Hills	9,900		
Center for the Aged, Laundry Facility Improvements	215,000		
Warehouse & Equipment, Montana State Prison	195,500		
Expansion Equipment, Montana State Prison	189,000		
Riprap, Prickley Pear Creek, Mountain View School	14,950		
DEPARTMENT OF MILITARY AFFAIRS			
Roof Replacement, Statewide	292,580	103,000	Federal
Construct Combined Support Maintenance Facility, Fort Harrison	40,000	1,845,000	Federal
Multiple Indoor Firing Ranges	22,600	1,195,540	Federal
Retrofit Nonarmory Facilities	5,000	150,000	Federal
Armory Storage Additions, Statewide	10,600	426,400	Federal
Organizational Maintenance Shop, Chinook	25,300	632,000	Federal
Organizational Maintenance Shop, Billings	70,300	632,000	Federal
Organizational Maintenance Shop, Kalispell	40,200	675,000	Federal
Organizational Maintenance Shop, Missoula	40,200	675,000	Federal
Organizational Maintenance Shop, Belgrade	45,200	675,000	Federal
Organizational Maintenance Shop, Culbertson	25,200	675,000	Federal
Paint Armories & Shops, Statewide	67,325	71,775	Federal
Enlarge Armory Vehicle Security Compounds	24,750	79,650	Federal
Federal Contingency Funds		200,000	Federal
Emergency Operations Center Supplemental		150,000	Federal
MONTANA UNIVERSITY SYSTEM			

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Agency/Program	CPF	Other Appropriated Funds	
Roof Replacements, MSU & UM	310,000		
Johnson Hall/Wilson Hall, Brick Repair, MSU	1,976,000		
Health & Safety Projects, UM & NMC	421,400		
Major Maintenance & Repairs, Statewide	213,950		
Electrical Distribution, Phase II, UM	550,000	550,000	Auxiliary
Brockman Center Partitions, NMC	27,000		
Planning for Replacement or Remodeling for University Hall, Mathematics, Health & Physical Education, & Life Sciences Facilities, UM		200,000	Other Than General Fund
Repair Parapet Walls, EMC	25,000		
Farm Shop, Agricultural Experiment Station	120,000		
DEPARTMENT OF AGRICULTURE			
Remodel Environmental Management Laboratory, Bozeman	80,000	20,000	State Feed & Fertilizer

Section 7. **Land acquisition appropriation.** The following money is appropriated to the Department of Fish, Wildlife, and Parks in the indicated amounts for purposes of land acquisition:

Wildlife Habitat Acquisition	1,000,000	FWP License Fees
	750,000	Federal

Expenditures from these sources may not exceed $1,000,000 in aggregate and the federal funds, subject to their appropriation for ongoing operations as provided in House Bill No. 500 and for previously appropriated capital construction projects as provided in section 4, must be expended prior to the FWP license fees revenue.

Fishing Access Site Acquisition	600,000	Fishing Licenses
Coal Tax Park Acquisition		
Anaconda Stack		Donation
Kleffner Ranch Acquisition Downpayment	30,000	Coal Tax Park Acquisition

The Department of Fish, Wildlife, and Parks shall negotiate for the purchase of the Kleffner Ranch and is authorized to expend $30,000 from the coal tax park acquisition account after September 1986, as an option on the Kleffner Ranch, if the following conditions are met:

(1) a purchase price of not more than $300,000 is negotiated for ranch buildings, not less than 40 acres, and creek frontage;

(2) private donations of $150,000 have been pledged toward the purchase price or maintenance trust;

(3) all matters relating to federal Superfund designation have been resolved and the purchase would not involve any state Superfund liability;

(4) in September 1986, the Office of Budget and Program Planning has estimated that revenues are available in the 1987 biennium in the coal tax park acquisition account in excess of the amounts appropriated in House Bill Nos. 500 and 928;

(5) an appraisal of the property under negotiation is completed by an appraiser acceptable to the Department of Fish, Wildlife, and Parks and the owner, with the cost to be paid by the owner; and

(6) the purchase agreement provides that the option will be refunded if the 50th Legislature does not appropriate the remainder of the negotiated purchase price. The authority of the Department of Fish, Wildlife, and Parks to negotiate and enter a purchase agreement for the Kleffner Ranch does not constitute approval of the Kleffner Ranch as approval is contemplated in House Bill No. 500, and does not void the appropriation for operation and maintenance of state parks contained in item 6b of House Bill No. 500.

Real Property Acquisition for Agricultural Museum, Fort Benton	55,000	125,000	Coal Tax Park Acquisition

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Agency/Program	CPF	Other Appropriated Funds
		35,000 Private

Section 8. **Appropriation of excess capital projects fund.** Any revenues in the capital projects fund received in excess of the amount appropriated in sections 1 through 11 and 13 through 19 are appropriated to the following departments for the indicated capital projects:

Agency/Program	CPF
DEPARTMENT OF ADMINISTRATION	
Fire Protection, Capitol Complex	$ 60,500
Land Acquisition and Parking Improvements, Capitol Complex	248,680
Asbestos Survey and Abatement, Statewide	66,000
DEPARTMENT OF STATE LANDS	
Fire Crew Quarters	44,000
MONTANA UNIVERSITY SYSTEM	
Classroom Renovation, UM	98,000

Section 9. **Building demolition or sale and removal.** (1) The Department of Administration may solicit bids for the demolition or for the sale and removal of the following buildings:

	Building Name
BOULDER RIVER SCHOOL & HOSPITAL	Cottage No. 5
	Old Administration Building
	Old Laundry Storage
	Tire/Rubber Storage
	Garage
	Hog House
	Old Granary
	Turkey House
	Ranch House
	Garage
	Chicken House
	Old Machine Shed
	Root Cellar
MONTANA VETERANS' HOME	Old Main & Annex
	Old Dorm
	Boiler Room
	Superintendent's Residence
MONTANA STATE HOSPITAL	Bolton
	Former Children's Unit
	Apartment Building "A"
	W.S. Superintendent's residence
	Old Butcher Shop
	Byron Hall

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	Former Lighthouse
	Maintenance Shop
	Lumber Storage
	Old Barn
PINE HILLS SCHOOL	Lewis & Clark Lodge

(2) The Director of the Department of Institutions must certify to the Department of Administration that each of the buildings set forth in subsection (1) is surplus to the needs of the department and the state by reason of the building's age, deteriorated physical condition, safety considerations, or license deficiencies and has no residual economic or useful life. If the cost of repairing the deficiencies would preclude reasonable restoration and refurbishing efforts, the Director of the Department of Administration may grant an order to proceed with demolition if:

(a) a successful contractor or bidder agrees to demolish or remove the building and reclaim the building site based on the salvage value of the building itself; and

(b) the demolition or removal of the building does not violate the provisions of the state antiquities law, as provided in Title 22, chapter 3, part 4, relative to established heritage properties under state ownership.

(3) The Director of the Department of Administration may permit the Director of the Department of Institutions to use the Prison Industries Program, established in 53-1-301 through 53-1-304, to demolish and remove selected institutional buildings listed in subsection (1). The proceeds from the sale of salvageable material obtained through the demolition process shall be deposited in the prison industries proprietary account. Permission may only be granted after the Office of Budget and Program Planning and the Legislative Finance Committee determine that the proceeds from the sale of salvageable material will support the cost of demolition and removal.

Section 10. **Sale of state land at Montana State Prison.** Pursuant to the provisions of 77-2-302 requiring that the Board of Land Commissioners consult with an appropriate legislative committee prior to the sale of buildings formerly used by a state institution, the Board is hereby authorized to sell the following properties, if it determines this sale to be in the best interest of the state. Sale proceeds must be deposited in the capital projects fund. The Board is authorized to pay costs of necessary surveys and appraisals and all other costs associated with the sale of land from the proceeds of the sale. The land that may be sold is:

(1) approximately 10 acres of land formerly known as the Bratten Ranch, with approximately 14 structures. This property borders on Main street in the city of Deer Lodge, a Montana Power Company substation, and a Department of Highways garage.

(2) approximately 10 acres of land formerly known as the Valiton Ranch, located 1 mile south of the Deer Lodge city limits. Included on this property are seven outbuildings and a duplex residence.

(3) approximately one-half acre of land and a single-family residence with detached two-car garage. This property is commonly known as the Brickyard property, south of the city of Deer Lodge.

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(4) approximately one-half acre of land and a single-family residence with detached garage, located on the prison ranch about 7 miles north of Deer Lodge on the frontage road; and

(5) approximately 5 acres of land commonly known as the Old Brickyard, which is located south of Deer Lodge on the Eastside Road.

Section 11. **Property acquisition for agricultural museum at Fort Benton — lease to city of Fort Benton.** (1) The appropriation in section 7 for real property acquisition for an agricultural museum at Fort Benton is for the purchase of real property located in or near the city of Fort Benton to be developed as the Montana Agricultural Center and Museum of the Northern Great Plains.

(2) The Department of Fish, Wildlife, and Parks shall purchase such property and shall lease it to the city of Fort Benton for $1 a year for as long as the city of Fort Benton provides for development, operation, and maintenance of the facility without cost to the state of Montana.

Section 12. **Authorizing inmate labor for construction of prison warehouse.** For the purposes of expediting the acquisition and construction of a warehouse building at Montana state prison, authorized in [section 6], the department of institutions may use inmate labor to construct the building and is exempt, for the purposes of completing this project, from the provisions of 53-1-301(7).

Section 13. Section 7, House Bill No. 833, L. 1983, is amended to read:

"Section 7. **Appropriation for Mansfield Center for Pacific Affairs.** There is appropriated $1 million from the BPICA to the Department of Commerce to assist in the erection of a memorial in honor of one of Montana's great citizens, Mike Mansfield. The department shall enter into an agreement with the Maureen and Mike Mansfield Foundation pursuant to which the department shall agree to pay the funds appropriated by this section to the foundation upon the receipt of at least $6 million by the foundation from other sources. The funds appropriated by this section must be used exclusively for the construction of the Mansfield Center for Pacific Affairs *in Lake County*, Montana. By this appropriation, the 48th Legislature indicates that it has determined that the state's support of the erection of a memorial through the establishment of the Mansfield Center for Pacific Affairs *in Lake County* is a lawful public purpose of statewide importance in that it will serve to inspire sentiments of respect for a man of great stature and importance to the state, will generate important economic development of the state by direct employment, attraction of visitors, and establishment of expanded trade opportunities."

Section 14. **Special session reauthorization.** The appropriations for capital projects authorized in section 6, House Bill 5, enacted by the 47th Legislature, second special session, are reappropriated through the biennium ending June 30, 1987. The Department of Administration may exempt these projects from any provisions of Montana law relating to the employment of architects, public bidding, bonding, or labor and wage requirements.

Section 15. **Planning and design.** The Department of Administration may proceed with the planning and design of capital projects prior to the

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sale of bonds or the receipt of other appropriated funds. The Department may use interaccount loans in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of bond proceeds or other appropriated funds.

Section 16. **Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the Department of Administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the Department of Administration. No such financial plan may be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in this act for that project; or

(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1985-87 Long-Range Building Program presented to the 49th Legislature.

Section 17. **Legislative consent.** The appropriations authorized in sections 1 through 11 and 13 through 19 constitute legislative consent for the capital projects contained in sections 1 through 11 and 13 through 19 within the meaning of 18-2-102.

Section 18. **HJR 50 study.** There is appropriated $5,000 from the capital projects fund for the biennium ending June 30, 1987, to the Legislative Council for the purpose of conducting the study requested by House Joint Resolution No. 50.

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved May 24, 1985.

HOUSE BILL NO. 932

AN ACT TO APPROPRIATE FUNDS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS LICENSE REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR REPAYMENT OF THE LOAN FOR REHABILITATION OF THE COONEY DAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Natural Resources and Conservation $20,000 each fiscal year of the biennium ending June 30, 1987, from the Department of Fish, Wildlife, and

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Parks license revenue account No. 02409 for repayment of the loan for rehabilitation of the Cooney Dam located near Red Lodge in Carbon County.

Approved April 30, 1985.

HOUSE BILL NO. 935

AN ACT APPROPRIATING MONEY FOR RESIDENTIAL ALCOHOL ABUSE TREATMENT FOR INDIGENT YOUTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the general fund to the Department of Social and Rehabilitation Services for residential alcohol abuse treatment for indigent youths:

Fiscal year 1986	$225,000
Fiscal year 1987	225,000

Approved May 24, 1985.

HOUSE BILL NO. 952

AN ACT TO APPROPRIATE FUNDS FOR IMPLEMENTATION OF THE RECOMMENDATIONS OF THE SELECT COMMITTEE ON WATER MARKETING TO FURTHER THE DEVELOPMENT OF A COMPREHENSIVE WATER POLICY FOR MONTANA.

WHEREAS, the Select Committee on Water Marketing was commissioned by the 1983 Legislature to undertake a study of the advantages and disadvantages of water marketing; and

WHEREAS, the Select Committee in completing its study determined that Montana needs to address broader questions of water policy in order to protect Montana's interests in the allocation and management of state waters; and

WHEREAS, the Select Committee has presented a comprehensive series of recommendations that must be considered as a whole; and

WHEREAS, these recommendations serve to revise Montana's water policy in order to maximize Montana's authority over management of state waters and other natural resources and to conserve water for existing and future beneficial uses by Montanans; and

WHEREAS, many of these recommendations are embodied in House Bill No. 680, which is under consideration by the 49th Legislature, as well as contained in the Select Committee's final report; and

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WHEREAS, funds are needed for various agencies of state government to implement these recommendations.

THEREFORE, the Legislature of the State of Montana finds it appropriate to allocate funds for the implementation of the recommendations and to further develop a comprehensive water policy.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation for water policy development.** There is appropriated for the biennium ending June 30, 1987, from the following source the amount described below to the Environmental Quality Council for a legislative water policy committee as provided in House Bill No. 680

resource indemnity trust interest account	$26,200

Section 2. **Appropriation for water reservations in the upper Missouri River Basin.** In order to prepare applications for proceedings to reserve water for present and future beneficial uses in the Missouri River Basin above Canyon Ferry Dam, the following funds are appropriated to the following departments:

(1) Department of Natural Resources and Conservation, for processing applications and for preparation of water reservations for conservation districts and municipalities

	1986-87 Biennium
resource indemnity trust interest account	$167,500

(2) Department of State Lands

	1986-87 Biennium
resource indemnity trust interest account	$30,000

(3) Department of Fish, Wildlife, and Parks

(a) for a grant to the Department of Health and Environmental Sciences, as approved by the Director of the Department of Fish, Wildlife, and Parks, for actual expenses in preparation of instream flow reservations for water quality

	FY 1986	FY 1987
state special revenue	$20,000	$20,000

(b) for preparation of instream flow reservations to protect the aquatic ecosystem

	1986-87 Biennium
(i) state special revenue	$31,250
(ii) federal/private special revenue	$93,750

(4) Department of Health and Environmental Sciences

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(a) from a grant from the Department of Fish, Wildlife, and Parks, for actual expenses in preparation of instream flow reservations for water quality

federal/private special revenue	$20,000	$20,000

(b) for preparation of instream flow reservations for water quality

resource indemnity trust interest account	$5,000	$5,000

Section 3. **Coordination instruction.** If House Bill No. 680 is signed by the governor, the provisions of that bill in section 16(1) and (3) concerning the deadline for applications for water reservations on the Missouri River are amended to read: "July 1, 1989". The provision requiring board action on reservation applications in section 16(3) is amended to read: "December 31, 1991", accordingly. The amendment is necessary because the Legislature in this act is appropriating funds sufficient to begin applications for reservations only on the upper Missouri River Basin.

Approved May 13, 1985.

HOUSE BILL NO. 961

AN ACT APPROPRIATING FUNDS TO THE MONTANA HISTORICAL SOCIETY TO PURCHASE THE CHARLES M. RUSSELL COLLECTION OF LETTERS, PAINTINGS, AND SKETCHES BELONGING TO THE ELKS LODGE OF GREAT FALLS, MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to purchase Charles M. Russell collection.** The Montana Historical Society may purchase the Charles M. Russell collection of letters, paintings, and sketches belonging to the Elks Lodge of Great Falls, Montana, for a total purchase price not to exceed $482,000. The Montana Historical Society may solicit and accept gifts and grants to assist in the purchase of this collection.

Section 2. **Appropriation.** (1) There is appropriated $150,000 from the general fund to the Montana Historical Society for the fiscal year ending June 30, 1985, to be used for the purpose of section 1. The balance of such funds not expended in fiscal year 1985 is appropriated for the biennium ending June 30, 1987, for the same purpose.

(2) There is appropriated $150,000 from the cultural and aesthetics projects account to the Montana Historical Society for the fiscal year ending June 30, 1987, for the purpose of section 1. This appropriation will require an interaccount loan from the general fund which must be repaid from the coal tax park acquisition trust interest income to the cultural and aesthetic project account by June 30, 1991.

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(3) There is appropriated from other special revenue funds any money received from gifts and grants by the Society and available for the purpose of section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 24, 1985.

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RESOLUTIONS

ENACTED BY THE

Forty-ninth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1985

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RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND ENCOURAGING PARTICIPATION IN AND SUPPORT OF MONTANA SPECIAL OLYMPICS WEEK.

WHEREAS, the Legislature recognizes that participation in sports and athletic competition is a most beneficial activity for developmentally disabled youth and adults; and

WHEREAS, the Montana Special Olympics program has been established to give each developmentally disabled person a chance to develop his skills, to experience success, and to grow both physically and mentally through an organized program of physical fitness and sports; and

WHEREAS, the State of Montana is participating in the Special Olympics and making the program's benefits available to developmentally disabled youth and adults of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature hereby expresses its enthusiastic support of the Montana Special Olympics program and recognizes May 12 through May 18, 1985, and May 11 through May 17, 1986, as "Montana Special Olympics Week".

BE IT FURTHER RESOLVED, that all Montana citizens are encouraged to participate in and to give their support to this unique and important program which gives each developmentally disabled youth and adult his best chance to share in the experiences of athletic competition which he would otherwise be denied.

Approved January 25, 1985.

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules be adopted:

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CHAPTER 1
Presiding Officer - Decorum, Order and Debate

1-1. The presiding officer of the Senate is the president, and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain, and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages, and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation, and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides.

1-9. (1) A communication or paper shall be addressed to the presiding officer and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person

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responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is presiding, he shall vote as any other member and may not vote a second time.

CHAPTER 2
Meetings, Quorums, and Attendance

2-1. The hour of meeting of the Senate and House of Representatives may be as ordered by the Senate or House.

2-2. Lobbying on the floor of the Senate or House of Representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the Committee of the Whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the House or Senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

2-8. If a quorum is present, five members of the Senate may order a call of the Senate, and fifteen members of the House of Representatives may order a call of the House.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3
Legislative Employees

3-1. The legislature shall prescribe the compensation of the employees of each house by joint resolution. Each house shall prescribe the duties of its

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officers and employees, and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. The Legislative Council shall be responsible for maintaining personnel files.

3-3. The committee on legislative administration of each house shall appoint a secretary for a standing or special committee on recommendation of the committee chairman, subject to the approval of the respective house. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The Legislative Council shall hire all engrossing and enrolling staff, who are under the direction of the bills committee.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are to:

(a) have custody of all records, bills, documents, and other papers;

(b) supervise the making and examination of the journal and the handling of bills and resolutions;

(c) deliver to the secretary of state at the close of each session the journal, bill books, and resolution books, and all copies of introduced bills and joint resolutions;

(d) collect from the chairmen or secretaries of all standing committees, special committees, and conference committees the minutes of such committees and deliver them to the state historical society. (See Rule 7-4)

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the Senate or the chief clerk of the House, subject to the general supervision of the presiding officer. All staff employed jointly shall be appointed by the joint Legislative Administration Committees.

3-7. The duties of the engrossing and enrolling staff are:

(a) to engross or enroll all bills delivered to them within 48 hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated;

(b) to correct clerical errors, absent the objection of the sponsor of a bill or amendment and the secretary of the Senate or chief clerk of the House of Representatives, in any bill or amendment originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

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(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the Montana Code Annotated.

The secretary of the Senate or chief clerk of the House and the sponsor of the bill or amendment shall be notified in writing of the clerical correction. An objection to the correction may be registered by the secretary of the Senate, chief clerk of the House, or sponsor by filing it in writing within 24 hours after receipt of the notice.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section. When a committee has proposed an amendment, the chairman is the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are to:

(a) maintain order under the direction of the presiding officer;

(b) execute commands and serve all processes;

(c) receive, distribute, and have custody of supplies.

3-9. The assistant sergeants-at-arms, doorkeepers, watchmen, janitors, pages, and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duty of the chaplain of each house is to open each day's session with a prayer.

3-11. A legislative aide is a person who has registered with the clerk of the House or secretary of the Senate and has been issued a distinctive identification form such as a name tag. Such identification may be issued only upon receiving written verification from a member that the person involved is serving him as an aide. A person may not represent himself to be a legislative aide unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule. Legislative aides must be of legal age unless otherwise approved by the presiding officer.

No member may designate more than one aide without the approval of the rules committee of the house involved.

Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

3-12. An employee, legislative aide, or legislative intern of either house is prohibited from lobbying as defined in Section 5-7-102(1), MCA. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee,

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in its discretion, may dismiss, suspend, or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. The offices of the Legislative Council shall serve both the Senate and House of Representatives as required.

The Council staff shall prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report and distribute the report to legislative leaders in each house and to members of the Senate committee on finance and claims and House committee on appropriations.

3-15. Contracts for purchase or lease of equipment and supplies made during the legislative session shall be made on the approval of the committee on legislative administration of each house, subject to the review of the presiding officer of the respective house. Purchase orders shall be issued by Legislative Council staff and accounting records kept in that office.

CHAPTER 4
Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

(6) Motions

(7) First reading and commitment of bills

(8) Second reading of bills (Committee of the Whole)

(9) Third reading of bills and consent calendar bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house involved shall revert to Order of Business No. 1 when reconvening after a recess.

CHAPTER 5
Motions

5-1. When a motion is made it shall be restated by the presiding officer and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

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5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions, which have precedence in the order listed:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) question of privilege

(5) to lay on the table

(6) for the previous question

(7) to postpone to a certain day

(8) to refer or commit

(9) to amend

(10) to postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under Order of Business No. 6 and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half

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hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) for parliamentary inquiry

(5) for suspension of the rules

(6) to lay on the table

(7) for the previous question

(8) to limit, extend the limits of, or to close debate

(9) to amend an undebatable motion

(10) to divide a question

(11) to pass business in Committee of the Whole

(12) to take from the table

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6
Bills and Resolutions

A. Form of Bills — Definition of Resolutions — General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used only to adopt or amend the rules of one house, to make recommendations concerning the districting and apportionment plan as provided by Article V, section 14, subsection (3), of the Montana Constitution, or to

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provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for Legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

6-2. All bill drafting requests shall require a legislative sponsor. Bills shall be printed on paper with numbered lines and shall be introduced in triplicate. Bills shall be numbered at the foot of each page (except page 1) and the original copy shall have a white cover of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the Montana Code Annotated repealed or amended in a bill shall be stated in the title, except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

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6-3. No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive, and judicial branches of state government, interest on public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11(4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the House committee on appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on October 1 following its passage and approval, except one that provides for appropriation by the legislature of public funds for a public purpose, which takes effect on July 1 following its passage and approval unless a different time is prescribed therein. Every joint resolution, unless a different time is prescribed therein, takes effect on its passage (Sections 1-2-201 and 1-2-202, MCA).

B. Introduction — Bill Limit

6-6. (1) A legislator may not request more than five bills from the Legislative Council nor may a legislator introduce more than five bills. This limit does not apply to:

(a) bills requested prior to the convening date of each session;

(b) interim committee bills;

(c) state agency bills;

(d) code commissioner bills;

(e) resolutions;

(f) standing committee bills;

(g) appropriation bills; or

(h) revenue bills.

(2) Bills and joint resolutions will be checked by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. Bills will be stored on the automated bill drafting equipment, printed, and delivered in triplicate to the requesting legislator. A stamp shall be affixed to the original bill cover and signed to indicate Council review. If such stamp is not affixed, the bill may not be introduced.

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(3) During a session a bill may be introduced by endorsing it with the name of a member and presenting it to the chief clerk of the House of Representatives or secretary of the Senate in triplicate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill shall be introduced in the house in which the legislator whose name appears first on the bill is a member. The chief joint sponsor's name shall appear immediately to the right of the first sponsor's name. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of the ..... (Name of agency or committee)".

(5) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All preintroduced bills will be made available to the public.

6-7. The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M.	Introduction Deadline 5:00 P.M.
	Legislative Day	
General Bills and Resolutions	10 (or 2 legislative days after delivery if delivery is after 14th day)	14
Revenue Bills	17	21
Committee Bills and Resolutions	36	40
Committee Revenue Bills	62	66
Appropriation Bills	No deadline	No deadline
Interim Study Resolutions	No deadline	No deadline
Bills repealing or directing the amendment or adoption of Administrative Rules and Joint Resolutions advising or requesting the repeal, amendment, or adoption of Administrative Rules	No deadline	No deadline

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the

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same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill.

C. First Reading and Referral

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6(5).

Upon introduction or reception of a bill, the chief clerk of the House or the secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be rereferred at any time before its passage.

D. Amendments and Substitute Bills

6-14. No law shall be revised or amended or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed and reproduced.

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in

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the house of origin. The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

6-19. If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, the bill shall be reproduced on yellow paper with all amendments incorporated into the copies. If the bill has been returned from a committee without amendments, only the first sheet need be reproduced on yellow paper, and the remainder of the text incorporated by reference to the preceding version of the entire bill. Bills referred to the bills committee of the house of origin for reproduction must be reported within three days unless further time is granted by that house.

E. Engrossing and Enrolling

6-20. When a bill has been reported favorably by Committee of the Whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the Whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting, and only the first sheet need be reproduced on blue paper with the remainder of the text incorporated by reference to the preceding version of the entire bill.

If a bill is amended by the standing committee or Committee of the Whole in the second house, the amendments will be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

6-21. When a bill has passed both houses it shall be enrolled under the direction of the bills committee of the house of origin. An original and two duplicate printed copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter shall be underlined and matter stricken with a line through it shall be omitted. The original and two copies of the bill shall be red lined. The history of the bill shall also be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

When the enrolling has been completed, the bill shall be examined by the sponsor and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which event it shall be signed that

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day. The fact of signing shall be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

A bill that has passed both houses of the legislature by the 90th day may be enrolled; clerically corrected by the presiding officers, if necessary; signed by the presiding officers; and delivered to the governor not later than 5 days after the 90th legislative day. All journal entries authorized under this rule will be entered on the journal for the 90th day.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 5-11-204, MCA, shall be filed with the clerk of the supreme court and the Legislative Council.

F. Second Reading — Committee of the Whole

6-22. All bills, except consent calendar bills, which have been reported by a committee, accepted by the house concerned, and reproduced shall be posted on the calendar for consideration by Committee of the Whole. The secretary of the Senate or chief clerk of the House shall record the time each bill is received and the time the bill is placed on members' desks. Until the 50th legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by Committee of the Whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or Committee of the Whole of the house concerned.

6-23. Every bill considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

All Committee of the Whole amendments shall be prepared and delivered to the clerk for reading before the amendment is voted on. The amendment form will include the date and time of the amendment. Each rejected proposed amendment shall be identified and kept in the office of the chief clerk of the House or secretary of the Senate. Upon adjournment, the text of such amendments shall be delivered to the state archives.

6-24. Prior to adoption of a Committee of the Whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a Committee of the Whole report on a bill is rejected, the bill shall remain on second reading.

6-26. Either house may resolve itself into a Committee of the Whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a Committee of the Whole, except as follows:

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(1) The only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into Committee of the Whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a Committee of the Whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G. Third Reading — Consent Calendar — Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present and voting in each house. On final passage the vote shall be taken by ayes and noes, and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

Any vote in one house on a bill proposing an amendment to the Montana Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the legislature will cause the bill to progress as though it had received the majority vote.

6-29. Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in Committee of the Whole; and the third prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is

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adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may be polled on a bill approved by two-thirds of the members present or reconvened to reconsider any bill so vetoed. (Montana Constitution, Art. VI, Sec. 10.)

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

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H. Transmittal of Bills — Revenue and Appropriation Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the House of Representatives to the Senate, the secretary of the Senate shall give a dated receipt for the bill to the chief clerk of the House. When a Senate bill is transmitted to the House of Representatives, the chief clerk of the House shall give a dated receipt to the secretary of the Senate.

6-34. No bill, except for appropriation bills, revenue bills, and amendments considered by joint committee, need be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the 45th legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the 70th legislative day.

A revenue bill is one which would either increase or decrease tax collections.

Revenue bills originating in the Senate shall be transmitted to the House on or before the 60th day, unless two-thirds of the members present and voting in the House determine that the bill may be transmitted after the 60th day. House amendments to such bills shall be transmitted by the House to the Senate on or before the 70th day unless two-thirds of the members present and voting in the Senate determine that such an amendment may be transmitted after the 70th day.

Appropriation and revenue bills originating in the House shall be transmitted to the Senate on or before the 70th day unless two-thirds of the members present and voting in the Senate determine that the bill may be transmitted after the 70th day. Senate amendments to such bills shall be transmitted by the Senate to the House on or before the 85th legislative day unless two-thirds of the members present and voting in the House determine that such an amendment may be transmitted after the 85th day.

Interim study resolutions, bills repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall as soon as possible transmit it to the other house with notice of its action.

I. Fiscal Notes

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for

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the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be reproduced and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Title 5, chapter 4, part 2, MCA).

CHAPTER 7
Committees

7-1. The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and expenses, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the Legislative Council staff.

7-2. Upon request of any member of the house in which a bill is pending, a standing committee shall submit a written report in triplicate on any bill or matter referred to it within seven days after the request, unless, at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees, joint committees, and subcommittees shall keep minutes of their meetings. The chairman of each such committee must designate a secretary to take and transcribe minutes. The chairman must

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authenticate the minutes by his signature. At the close of the session, the chairman shall turn the original and two complete copies of the minutes over to the chief clerk of the House or secretary of the Senate. The original minutes shall be delivered to the historical society. The Legislative Council and the law library shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate committee on finance and claims and the House committee on appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House committee on appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings shall be agreed upon by their chairman and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken unless otherwise specified by individual house rules.

7-10. Conference committee reports must give clerical instructions for enrolling by referring to the reference bill version.

When a conference committee report is filed with the secretary of the Senate or chief clerk of the House of Representatives, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the

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same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day. If a conference committee report is adopted on third reading and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in each house. This third reading vote must be used to determine if the required number of votes has been cast.

7-11. Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

7-12. A committee block scheduling system will be implemented in the Senate and House of Representatives. The schedule will be coordinated between houses and will be adjusted according to the legislature's work load.

CHAPTER 8
Rules and Journal

8-1. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) the number of each bill when it is introduced and subsequently considered;

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 5-2-214, MCA).

The title of each bill shall be listed in the index of the permanent journals.

8-3. The bills and journal committee of each house shall supply the Legislative Council with the contents of the daily journal to be stored on an automated system, examine its journal, distribute a daily journal to all legislators, order correction of any errors, and report each legislative day immediately after roll call.

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8-4. The journal of the Senate must be authenticated by the signature of the president, and the journal of the House of Representatives, by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Council (Sec. 5-11-201 through 5-11-203, MCA).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the Senate and House of Representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives, and the joint rules of the Senate and House of Representatives. Upon adoption, the secretary of the Senate and the chief clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, House, or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and House of Representatives.

8-8. Pursuant to the authority established in Sections 5-11-211 through 5-11-214, MCA, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $400; an additional $150 is required for mailing.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions, amendments, status sheets, or other documents may be purchased according to the length of the document as follows:

1-5 pages	$ .25
6-15 pages	$ .50
16-40 pages	$1.00
41-100 pages	$1.50
101-200 pages	$2.00
Over 200 pages	$4.00
Copies of enacted bills	cost of reproduction.

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CHAPTER 9
Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members, if the request occurs before the vote is taken.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electronic voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or House) bill number ..... having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electronic voting system is used, the signal shall be sounded after the question is stated and then the presiding officer shall state "Those in favor vote yes and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is excused when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the Senate or chief clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in Committee of the Whole shall be recorded and made public. On final passage of any bill or

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joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. Roll call votes shall be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole referred to in Joint Rule 6-26(1)(a) through (d). A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

CHAPTER 10
Consent Calendar

10-1. Noncontroversial bills and simple and joint resolutions qualifying for the consent calendar may be processed by a standing committee according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. No appropriation or revenue bills may be recommended for the consent calendar.

(2) The legislation is then sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for one legislative day before consideration under Order of Business No. 11, Special Orders of the Day. At that time, the presiding officer will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(4) Any three members may submit written objections and the legislation must then be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be voted on following third reading.

(6) Legislation on the consent calendar will be voted on individually with the roll call vote spread on the journal as the final vote on those bills and resolutions.

(7) Legislation passed on the consent calendar will then be transmitted to the second house.

CHAPTER 11
Statement of Legislative Intent

11-1. Definition. For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill will express the common understanding of those

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components of the legislature voting on the bill. This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill, while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

11-2. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, committee of the whole or conference committee) agrees by a two-thirds vote to attach the statement.

11-3. Statement of intent to accompany bill — when — how. A statement shall accompany a bill as follows:

(1) Statements of intent are required for bills delegating rulemaking or licensing authority. The statement shall be stored on ALTER, printed, and reproduced on paper of the same color and in the same manner as the bill, and shall be attached to the bill. The statement shall be reproduced on paper of the same color as the bill and attached to the bill on all subsequent reproductions of the bill.

(2) The standing committee of the house in which the bill originates is responsible for authoring a statement of intent for a bill requiring one.

11-4. Modification. Any committee subsequently considering the bill may amend a previous statement. The statement of intent will be reflected in the history of the bill.

11-5. Conference committee on intent only. When the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

A new statement of intent written by the second house will be processed in the same manner as a second house amendment.

A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Approved January 18, 1985.

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING LARRY PEABODY FOR WINNING THE 1984 WORLD BAREBACK CHAMPIONSHIP.

WHEREAS, Montana has a long and illustrious cowboy heritage, the most recent embodiment of which is Lawrence Emmett Peabody; and

WHEREAS, Larry Peabody is a true native son, born to Charles and Ann Weiss Peabody in Hardin and having attended schools in Billings, Sidney, Miles City, and Bozeman; and

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WHEREAS, all Montanans are proud of Larry Peabody's determination and grit in advancing through the ranks of 4-H, FFA, Little Britches, and youth rodeos to a National Intercollegiate Rodeo Association bareback and team championship at Dawson Community College and to individual and all-around titles on the Montana Professional Rodeo Association circuits; and

WHEREAS, Larry Peabody has consistently moved up in the Professional Rodeo Cowboy Association's national rankings; and

WHEREAS, Larry Peabody has continuously exhibited the professional and personal qualities which are an example and inspiration to all Montanans; and

WHEREAS, Montanans have been treated to many thrilling moments by Larry Peabody, including the still-standing National Finals Rodeo highest-scored bareback ride, 89 points, scored on Dreamboat Annie in Oklahoma City in 1981; and

WHEREAS, in winning the 1984 World Bareback Championship in the National Professional Rodeo Association championship finals competition on December 9, 1984, Larry Peabody has brought recognition and honor to himself, to his family, and Three Forks, Gallatin County, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature honor and congratulate Larry Peabody on his world bareback championship and urge him to continue his efforts as an ambassador of Montana.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Charles and Ann Peabody and to Larry Peabody.

Approved March 15, 1985.

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 75TH ANNIVERSARY OF CARROLL COLLEGE.

WHEREAS, the Legislature of the State of Montana is honored to proclaim the 75th or "Diamond" anniversary of Carroll College; and

WHEREAS, Carroll College has contributed significantly to educational excellence in the State of Montana; and

WHEREAS, Carroll College began in 1909 as Mount St. Charles College and it has by 1984 become one of the foremost private, independent liberal arts institutions in the Northwest; and

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WHEREAS, the philosophical cornerstone of Carroll College expressed by Bishop John P. Carroll is as alive today as it was 75 years ago: "A college education is the surest antidote to that dead level which mere business, professional and technical training have reduced the men of America. A man will be a better physician, lawyer, statesman, businessman, miner, farmer if he also be a more highly educated man."

WHEREAS, Carroll College's current student body totals over 1,300 individuals and its living alumni number over 7,100 individuals, 3,124 of whom reside in the State of Montana; and

WHEREAS, it is appropriate that the Legislature of the State of Montana commemorate this distinguished occasion.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the academic year of 1984-85 be a year of tribute to Carroll College's 75th Diamond Jubilee, in honor of her anniversary and her many outstanding contributions to the State of Montana.

Approved March 8, 1985.

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO NAME THE NEW DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION BUILDING THE "LEE METCALF BUILDING" IN RECOGNITION OF THE MANY CONTRIBUTIONS LEE METCALF MADE TO THE PEOPLE OF THE STATE OF MONTANA THROUGH HIS WORK AND CONCERN FOR ENVIRONMENTAL PROTECTION, CONSERVATION, AND PRESERVATION OF NATURAL RESOURCES AND WILDLIFE.

WHEREAS, with enactment of HB 900, the 48th Montana Legislature authorized the construction of a new building to house the Department of Natural Resources and Conservation, which building is scheduled for completion on November 11, 1985; and

WHEREAS, the new building for the Department of Natural Resources and Conservation should be appropriately named and should remind us of human dedication to the preservation of lands, waters, and natural resources; and

WHEREAS, Lee Metcalf was a native of Montana, born on a farm near Stevensville and a descendent of pioneers; and

WHEREAS, Lee Metcalf served the people of Montana with great distinction; was elected a State Representative from Ravalli County and served in the 25th Montana Legislature; was an Assistant Attorney General of Montana from 1937-41; was elected to a 6-year term as an Associate

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Justice of the Montana Supreme Court in 1946; was elected from Montana's First Congressional District to the U.S. House of Representatives in 1952, and was reelected to the three succeeding Congresses from January 3, 1953, to January 3, 1961; was elected in 1960 to the U.S. Senate and served there until his death in Helena, Montana, on January 12, 1978; and

WHEREAS, Lee Metcalf possessed a deep concern for the issues of conservation, natural resources, and environmental quality well before such issues became fashionable; and early in his service in the U.S. House of Representatives, led opposition to a bill that would have given vested rights in the national forests to commodity interests; and

WHEREAS, Lee Metcalf took a strong stand to protect the environment and wilderness as a member of the House Interior and Insular Affairs Committee, its Subcommittee on Reclamation, and the Subcommittee on Mining and Public Lands; and

WHEREAS, in the U.S. Senate, Lee Metcalf held a continuing concern for the proper development and management of the public lands and forests; and, for over two decades, participated in virtually every piece of legislation relating to the environment and conservation; and

WHEREAS, Lee Metcalf was a tireless advocate of legislation to encourage conservation and wise use of the nation's public lands and natural resources, especially as a member of the Senate Committee on Energy and Natural Resources and as Chairman of the Subcommittee on Public Lands and Resources; and

WHEREAS, Lee Metcalf sponsored legislation to inventory the nation's outdoor recreational resources and needs; to accelerate the federal drive for clean water; and to grant aid to the states for comprehensive water resource planning; and, similarly, was a sponsor of laws to combat air and water pollution, including: the Clean Air Act (1963) and Amendments (1965 and 1966); Air Quality Improvement Act (1970, incorporating provisions of three bills by Senator Metcalf); Water Quality Act (1965); Clean Water Restoration Act (1966); Water Quality Improvement Act (1970); Solid Waste Disposal Act (1965); and Resource Recovery Act (1970); and

WHEREAS, Senator Lee Metcalf worked for significant additions to the National Park System and to the nation's wildernesses; and was a staunch supporter of the National Wild and Scenic River System, and was instrumental in including in the system over 200 miles of the Three Forks of the Flathead River in Western Montana and approximately 150 miles of the Missouri River in Central Montana; and

WHEREAS, Lee Metcalf was active in designation of the Lincoln-Scapegoat Wilderness Area, passage of the Montana Wilderness Study Act in 1976, and enactment of legislation creating the Welcome Creek Wilderness Area near Missoula; and, at the time of his death, was working on bills to give wilderness protection to nearly 1 million acres in the Absaroka-Beartooth region adjacent to Yellowstone National Park, and to nearly 400,000 acres of the Great Bear Area south of Glacier National Park; and

WHEREAS, Lee Metcalf led the long fight to protect the environment from degradation through surface mining; and as Senate Floor Leader, led

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the debate for strip mining control legislation in both 1974 and 1975, when congressionally approved legislation was vetoed by the President; and, later in 1977, served again as Floor Leader for Senate passage of the Surface Mining Control and Reclamation Act of 1977, which was signed into law; and

WHEREAS, from 1961 to 1975, Lee Metcalf served on the Migratory Bird Conservation Commission and attended every Commission meeting, in which the Commission decided to purchase a total of 525,000 acres of land and create 43 new refuges for waterfowl and other birds; and

WHEREAS, Lee Metcalf dedicated his life to the real interests of the people of Montana by working to preserve the greatness and beauty of the nation's lands, waters, and natural resources for the benefit of future generations; and

WHEREAS, Lee Metcalf emphasized the importance of continued public and government interest in the conservation and protection of public lands, water, and other basic natural resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration name the new Department of Natural Resources and Conservation building the "Lee Metcalf Building".

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Department of Administration and to the building contractors for the preparation of appropriate plaques or signs designating the building as the "Lee Metcalf Building".

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Director of the Department of Natural Resources and Conservation, Mrs. Donna Metcalf, and the publisher of each newspaper in the state.

Approved March 22, 1985.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REVISING THE FEDERAL CONDEMNATION PROCEDURES TO AFFORD GREATER CONSIDERATION TO THE INTERESTS OF THE LANDOWNER.

WHEREAS, the federal procedures for the exercise of the power of eminent domain provide fewer protections for the landowner than do the condemnation procedures of Montana and many other states; and

WHEREAS, the federal condemnation procedures provide in 40 U.S.C.A. 258(a) through 258(f) for taking of possession and title by declaration of taking in advance of final judgment in a condemnation proceeding; and

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WHEREAS, the declaration of taking procedure is not necessary because Rule 71(a) 28 U.S.C.A. (Condemnation of Property), Federal Rules of Civil Procedure, provides a fair and complete procedure without the supplemental declaration of taking provisions; and

WHEREAS, the purpose of the declaration of taking provisions is to provide means by which the United States can acquire quickly fee simple absolute title to land for use of the United States; and

WHEREAS, that purpose is either abused by a condemning agency hoping to intimidate a landowner to accept a low condemnation offer or is greatly outweighed by the interests of the landowner in maintaining possession and title until a condemnation hearing is completed under Rule 71A, Federal Rules of Civil Procedure; and

WHEREAS, Rule 71A(l), Federal Rules of Civil Procedure, prohibits an award of costs and attorney fees to the prevailing party in condemnation cases, although Montana and other states provide for an award of costs and attorney fees and at least one federal court has stated that the federal approach may no longer be the wisest law; and

WHEREAS, federal law precludes reversion to the landowner of condemned property subsequently abandoned or used for a purpose other than the original condemnation purpose, although Montana and other states have provisions for reversion in certain instances.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is most earnestly requested to repeal 40 U.S.C.A. 258(a) through 258(f), which provides for taking of possession and title by declaration of taking in advance of final judgment in a condemnation proceeding; and

BE IT FURTHER RESOLVED, that the Congress of the United States is most earnestly requested to enact legislation providing for a court award of necessary expenses of litigation to the condemnee when the landowner prevails by receiving an award in excess of the final offer of the condemnor, thus superseding Rule 71A(l), Federal Rules of Civil Procedure, Title 28, U.S.C.A., which presently prohibits such an award; and

BE IT FURTHER RESOLVED, that the Congress of the United States is most earnestly requested to enact legislation providing for reversion of condemned property to the condemnee or his successor in interest upon abandonment or discontinuance of the use for which the property was condemned; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States and to each member of the Congress of the United States.

Approved March 11, 1985.

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SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests to maximize yield while protecting the resource for future generations; and

WHEREAS, proper forest management and use are necessary for the protection and conservation of other important resources, such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two Senators and two Representatives, one from each party, to represent Montana on the Western States Legislative Forestry Task Force, which operates as a clearinghouse for opinions from all the various interests involved in the Western States forests and which includes among its duties a report to the Legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the presiding officers of the Legislatures of Washington, Idaho, Oregon, Wyoming, Alaska, and California and to the Executive Director of the Western States Legislative Forestry Task Force.

Approved March 15, 1985.

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ASSIGNING THE REVENUE OVERSIGHT COMMITTEE TO REVIEW PROCEDURES FOR THE PAYMENT OF PROPERTY TAXES AND FOR THE SALE OF REAL AND PERSONAL PROPERTY FOR DELINQUENT TAXES.

WHEREAS, the Legislature has charged County Treasurers with responsibility for the collection of property taxes; and

WHEREAS, property taxes are payable in two installments during the year and the amount to be paid in each installment is a burden to certain classes of property taxpayers; and

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WHEREAS, the Montana Code Annotated provides procedures for the sale of real and personal property for delinquent taxes; and

WHEREAS, the procedures for tax sales set forth in Title 15, chapter 17, MCA, fail to take into account an orderly and efficient administration of tax sales.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the revenue oversight committee be assigned to study:

(1) methods for allowing property taxes to be paid in a greater number of installments or through other payment procedures that may be adopted as an option by the tax collecting jurisdiction;

(2) uniform and equitable procedures and safeguards for the sale of real and personal property for taxes; and

(3) the establishment of uniform and equitable procedures and safeguards for the public and private sectors in the taking and disposal of real and personal property for taxes.

BE IT FURTHER RESOLVED, that the committee cooperate with local government representatives and other appropriate public and private institutions involved in taxation.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement such findings.

Approved March 25, 1985.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR THE PRESIDENT OF THE UNITED STATES TO IMMEDIATELY SUBMIT TO CONGRESS A BALANCED FEDERAL BUDGET AND FOR CONGRESS TO ADOPT A BALANCED BUDGET FOR THE ENSUING FISCAL YEAR.

WHEREAS, the Office of Management and Budget has projected a federal deficit of $210 billion in fiscal year 1985; and

WHEREAS, the Office of Management and Budget has forecast a long-term federal budget deficit of $229 billion by fiscal year 1989; and

WHEREAS, the Congressional Budget Office has projected a federal budget deficit of $263 billion by fiscal year 1989; and

WHEREAS, in November 1983, the debt ceiling was raised by $101 billion to $1.490 trillion in order to allow the Department of the Treasury to increase its legal borrowing capacity to pay the expenses for programs previously written into law; and

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WHEREAS, in May 1984, the debt ceiling was increased another $30 billion to $1.520 trillion; and

WHEREAS, in June 1984, the debt ceiling was raised again, this time by $53 billion, with the debt ceiling set at $1.573 trillion; and

WHEREAS, the interest payments on the public debt represented 13 cents per dollar of federal budget outlays in fiscal year 1984; and

WHEREAS, the net interest owed on the public debt is estimated at $109.5 billion in 1984 — the equivalent of $300 million a day — and at $130.9 billion in 1985; and

WHEREAS, for fiscal year 1989, the Office of Management and Budget forecasts net interest costs of the public debt at $153.1 billion, and the Congressional Budget Office projects net interest costs of the debt at $214 billion, which figures respectively represent $419 million and $586 million owed for each day of the year in interest alone; and

WHEREAS, in the past 5 years, the gross federal debt has almost doubled and is expected to total $1.807 trillion by the end of fiscal year 1985.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature call upon the President of the United States to immediately submit to the United States Congress a balanced federal budget.

(2) That the United States Congress adopt a balanced budget for the ensuing federal fiscal year.

(3) That the Secretary of State send a copy of this resolution to the President of the United States, the Speaker and Clerk of the United States House of Representatives, the President and Secretary of the United States Senate, and to each member of the Montana Congressional delegation.

Approved March 26, 1985.

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNMENTS OF MONTANA AND WYOMING TO RESOLVE THEIR DIFFERENCES ON THE POWDER RIVER THROUGH NEGOTIATION OF A BASIN MANAGEMENT PLAN.

WHEREAS, proposed water development projects in Wyoming could adversely affect the water quality of the Powder River flowing into Montana; and

WHEREAS, there are conflicting reports on the degree of water quality degradation and the effect such degradation would have on existing water uses in Montana; and

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WHEREAS, there is dispute over the validity of the date of the water rights proposed to be developed in Wyoming's Middle Fork Project; and

WHEREAS, these differences could lead to costly litigation; and

WHEREAS, currently 25% of the salt load of the Powder River flowing into Montana is attributable to discharges from secondary oil recovery operations in the Salt Creek drainage; and

WHEREAS, the Yellowstone Compact Commission has jurisdiction to resolve conflicts between Montana and Wyoming over the allocation of water from the Powder River; and

WHEREAS, the commissioners from Montana and Wyoming disagree on the Compact's jurisdiction over water quality and the apportionment of water from the Powder River; and

WHEREAS, the Wyoming Water Development Commission has the responsibility for the development of the Middle Fork Reservoir Project; and

WHEREAS, conflict over water quality is both a legal and a technical issue, involving the Attorney General as well as the Yellowstone River Compact Commission and water quality agencies in Wyoming and Montana; and

WHEREAS, there may be the potential for the states to cooperate on a joint water development project or plans that resolve both states' concerns; and

WHEREAS, this issue is complex and involves a number of agencies in both states; and

WHEREAS, there are other Yellowstone River Basin tributaries for which similar considerations will arise in the near future.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana urge the governments of Wyoming and Montana to resolve their differences on the Powder River through negotiation of a basin management plan.

(2) That the purpose of this plan be to exchange information, establish criteria for evaluating proposed development, and investigate the potential for joint water projects.

(3) That the intent of the plan be to avoid litigation by resolving the differences between the states through negotiation.

(4) That it be proposed that this plan be negotiated by a team of individuals from both states appointed by the respective Governors.

(5) That this team meet on a regular schedule as needed until a negotiated management plan is completed.

(6) That Governor Schwinden, together with representatives of the Montana Legislature, be urged to meet with Governor Herschler and representatives of the Wyoming Legislature as soon as possible to establish the management plan negotiation team.

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(7) The respective Governors are encouraged to consider implementing similar basin management negotiation processes on other Yellowstone River Basin tributaries as need arises.

(8) That the Secretary of State send a copy of this resolution to Governor Ted Schwinden, Honorable Ed Herschler, Governor of Wyoming, Honorable Gerald Geis, President of the Wyoming Senate, and Honorable Jack Sidi, Speaker of the Wyoming House of Representatives.

Approved March 19, 1985.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING REPEAL OF THOSE SECTIONS OF THE FEDERAL LAW WHICH LIMIT THE POLITICAL ACTIVITY OF FEDERAL EMPLOYEES.

WHEREAS, federal employees, including postal workers, are prohibited under the Hatch Act from holding elective office, engaging in partisan political activity, meeting in partisan caucuses, and endorsing partisan candidates; and

WHEREAS, federal employees are thereby denied the constitutional right to participate fully as private citizens in the political process of this nation; and

WHEREAS, the Hatch Act may be amended or repealed by Congress but has remained essentially unchanged in this regard since its passage; and

WHEREAS, the State of Montana strongly supports legislation that would provide federal employees with all rights granted to private citizens, including the right of free political expression.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be urged to repeal those portions of the Hatch Act which limit or proscribe the right of free political expression of federal employees.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's United States Senators and Representatives.

Approved March 26, 1985.

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN MEMORY OF ALLEN L. KIMERY.

WHEREAS, Allen L. Kimery was born in Prague, Oklahoma, on June 13, 1946, and spent his early life in that city. He attended the University of Oklahoma at Norman and graduated from Central State University at

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Edmond, Oklahoma, in 1968 with a Bachelor of Science Degree in Business Administration; and

WHEREAS, Allen L. Kimery married Helen Jo Ford in Oklahoma City in August of 1967; they have two children, Kristina, age 14, and Matthew, age 8; and

WHEREAS, Allen L. Kimery was employed by the Missoula Sheriff's Department as a Deputy Sheriff on September 22, 1975, and was promoted to the rank of Sergeant in December of 1981. Sergeant Kimery had served in both Patrol and Detective Divisions. In August of 1982 Sergeant Kimery returned to Patrol Division as Watch Commander and was so employed at the time of his death; and

WHEREAS, on December 6, 1984, at approximately 2:55 a.m., Sergeant Allen L. Kimery was shot and killed while serving his community; and

WHEREAS, the Missoula Sheriff's Department, Montana law enforcement agencies, and all Montanans feel the loss of Sergeant Allen L. Kimery, exemplary as a peace officer and as a man, and extend to his family heartfelt condolences and respect.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Allen L. Kimery, husband, father, and public servant who died in the line of duty, is hereby honored and memorialized.

BE IT FURTHER RESOLVED, that the memory of Allen L. Kimery serve as an example to all Montanans of a life of dedicated service and personal integrity.

Approved March 18, 1985.

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING MONTANA'S PARTICIPATION IN THE CLOSE UP PROGRAM IN WASHINGTON, D.C., IN APRIL 1985.

WHEREAS, citizen participation in the political system is vital for the survival of American democracy; and

WHEREAS, to participate effectively, citizens must be knowledgeable about the American political system at local, state, and national levels; and

WHEREAS, the Close Up Foundation offers high school students an opportunity to expand their knowledge of the federal government.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature supports and encourages Montana's participation in the Close Up Program in Washington, D.C., in April 1985.

Approved March 26, 1985.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REAUTHORIZE THE INDIAN HEALTH CARE IMPROVEMENT ACT.

WHEREAS, the Indian Health Care Improvement Act was passed in 1976 with the purpose of improving Indian health to the level enjoyed by other Americans; and

WHEREAS, for the past 8 years, the Indian Health Care Improvement Act has been an important source of funds for vital Indian health programs, including clinical care, alcohol and mental health programs, training and recruitment of health personnel, and facilities construction; and

WHEREAS, the Act expired on October 1, 1984; and

WHEREAS, although significant progress has been made, the purpose of the 1976 Act to improve Indian health to the level enjoyed by other Americans remains to be achieved; and

WHEREAS, severe problems such as infant mortality, alcoholism, diabetes, tuberculosis, and hepatitis remain much more serious among Indians than among other Americans, including those in the State of Montana; and

WHEREAS, many Indian health facilities are in a shocking state of disrepair, and many needed facilities have yet to be built, including facilities in the State of Montana; and

WHEREAS, many Indian communities, including those in the State of Montana, lack necessary sanitation facilities; and

WHEREAS, in the urban areas of Montana, there is a critical need for health care provided by the federal Indian Health Care Improvement Act in the form of grants to urban Indian centers; and

WHEREAS, on many Indian reservations in Montana there are serious shortages of health personnel and equipment, and the sanitation facilities need substantial improvement; and

WHEREAS, in recognition of the continuing health needs recited above, Congress in October of 1984 passed a bill to amend and reauthorize the Indian Health Care Improvement Act; and

WHEREAS, this bill would have established important new programs, including a Catastrophic Health Emergency Fund; and

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WHEREAS, in spite of the great need for reauthorization of the Indian Health Care Improvement Act and the broad bipartisan support for the bill, President Reagan vetoed the bill; and

WHEREAS, the State of Montana has a vital interest in the health of its Indian citizens; and

WHEREAS, the State of Montana is concerned that if Congress does not reauthorize the Indian Health Care Improvement Act early in 1985, appropriations for Indian health programs will be drastically reduced, with disastrous effects on the health of American Indians, including those in the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature calls upon the United States Congress to reauthorize the Indian Health Care Act and upon President Reagan to sign it into law.

(2) That copies of this resolution be sent to the Speaker of the United States House, the President of the United States Senate, all members of the Montana Congressional Delegation, and the President of the United States.

Approved April 18, 1985.

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO PASS LEGISLATION CALLING FOR THE PRESIDENT TO SEND A SPECIAL ENVOY TO IRELAND TO HELP EFFECT A PEACEFUL RESOLUTION OF THE IRISH CONFLICT.

WHEREAS, our nation has been immeasurably strengthened by the contributions of ethnic and religious groups from around the world, including Catholics and Protestants from Northern Ireland; and

WHEREAS, our country's strong traditional ties of friendship and a shared heritage with the Republic of Ireland and Great Britain have contributed to the well-being of all three nations; and

WHEREAS, the people of Ireland continue to suffer from political and civil strife that rends the fabric of human society; and

WHEREAS, we take no side in the Irish dispute, but deplore all violence from whatever source; and

WHEREAS, the United States, in the spirit of peace and humanity, has interceded in other areas and lands torn by civil strife to bring about a lasting resolution of the problem and lay to rest the specter of religious bitterness; and

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WHEREAS, the United States can and should take a constructive part in bringing about a peaceful solution to the problems that divide Ireland.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States is able to, and in fact should, take the lead in formulating and effecting a peaceful and just resolution to these problems because the United States has benefited so greatly during the past 150 years from its relationships with both Ireland and Great Britain.

BE IT FURTHER RESOLVED, that Congress is urged to pass legislation calling for the President to appoint a Special Envoy to be dispatched to Ireland for the purpose of participating in and bringing about a resolution to the centuries-old problems in Ireland and specifically since 1921 in Northern Ireland.

BE IT FURTHER RESOLVED, that the President, accordingly, is urged to appoint the Special Envoy without delay upon receipt of the congressional action.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, the Speaker and Chief Clerk of the U.S. House of Representatives, the President and Secretary of the U.S. Senate, the Irish and British ambassadors to the United States, the members of the Montana Congressional Delegation, and Congressman Mario Biaggi, chairman of the ad hoc Congressional Committee for Irish Affairs.

Approved March 11, 1985.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PLEDGING THE CONTINUED SUPPORT OF THE LEGISLATURE FOR INCOME TAX INDEXING.

WHEREAS, on January 22, 1979, House Bill No. 303 was introduced in the Montana House of Representatives and referred to the House Committee on Taxation; and

WHEREAS, on March 26, 1979, the House Committee on Taxation reported House Bill No. 303 to the floor of the House with a "Do Pass As Amended" recommendation; and

WHEREAS, on March 27, 1979, the House of Representatives acting as a Committee of the Whole, on Second Reading of House Bill No. 303, voted that House Bill No. 303 "Do Pass" by a vote of 92 ayes and 4 noes; and

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WHEREAS, on March 27, 1979, the House of Representatives, on Third Reading of House Bill No. 303, passed House Bill No. 303 by a vote of 92 ayes and 4 noes; and

WHEREAS, on March 27, 1979, House Bill No. 303, having passed the House of Representatives, was transmitted to the Senate for concurrence; and

WHEREAS, on March 27, 1979, House Bill No. 303 received a first hearing on the floor of the Senate and was referred to the Senate Committee on Taxation; and

WHEREAS, on April 12, 1979, the Senate Committee on Taxation reported House Bill No. 303 to the floor of the Senate with a recommendation that House Bill No. 303 "Be Concurred In"; and

WHEREAS, on April 16, 1979, the Senate, acting as a Committee of the Whole, on Second Reading of House Bill No. 303, voted that House Bill No. 303 "Be Concurred In", with only 8 dissenting votes; and

WHEREAS, on April 17, 1979, the Senate, on Third Reading of House Bill No. 303, concurred in House Bill No. 303 by a vote of 38 ayes and 10 noes; and

WHEREAS, on April 20, 1979, House Bill No. 303 was signed by the Honorable William L. Mathers, President of the Senate, and by the Honorable Harold Gerke, Speaker of the House of Representatives, and subsequently delivered forthwith to the Honorable Thomas L. Judge, Governor; and

WHEREAS, on May 14, 1979, the Honorable Thomas L. Judge, Governor, vetoed House Bill No. 303 for various and sundry reasons; and

WHEREAS, on November 4, 1980, Initiative No. 86, described as an initiative to "CHANGE THE MONTANA INCOME TAX STRUCTURE TO REQUIRE THAT TAX BRACKETS, EXEMPTIONS, STANDARD DEDUCTIONS, AND MINIMUM FILING REQUIREMENTS BE ADJUSTED EACH YEAR TO PREVENT TAX INCREASES DUE SOLELY TO INFLATION", was submitted to a vote of the people of the State of Montana; and

WHEREAS, on November 4, 1980, the people of the State of Montana approved Initiative No. 86 by a margin of 233,497 in favor of the initiative and 102,635 against the initiative; and

WHEREAS, the effect of the passage of Initiative No. 86 has resulted in the standard deduction available to payers of Montana personal income taxes increasing from the lesser of 15% of adjusted gross income or $1,000 for single returns or $2,000 for joint returns in 1980, to the lesser of 20% of adjusted gross income or $1,880 for single returns or $3,760 for joint returns in 1983; and

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WHEREAS, the tax brackets from which personal income taxes are calculated have changed from the figures presented in Table 1 as they were in 1980, to the figures presented in Table 2 as they were in 1984; and

TABLE 1
Tax Brackets for 1980

Over	But Not Over	Tax Is:
$ 0	$ 1,000	2% of taxable income but not less than $1.00
$1,000	$ 2,000	$ 20 plus 3% of excess over $ 1,000
$2,000	$ 4,000	$ 50 plus 4% of excess over $ 2,000
$4,000	$ 6,000	$ 130 plus 5% of excess over $ 4,000
$6,000	$ 8,000	$ 230 plus 6% of excess over $ 6,000
$8,000	$10,000	$ 350 plus 7% of excess over $ 8,000
$10,000	$14,000	$ 490 plus 8% of excess over $10,000
$14,000	$20,000	$ 810 plus 9% of excess over $14,000
$20,000	$35,000	1,350 plus 10% of excess over $20,000
$35,000		2,850 plus 11% of excess over $35,000

TABLE 2
Tax Brackets for 1984

Over	But Not Over	Tax Is:
$ 0	$ 1,300	2% of taxable income but not less than $1.00
$1,300	$ 2,500	$ 26 plus 3% of excess over $ 1,300
$2,500	$ 5,000	$ 62 plus 4% of excess over $ 2,500
$5,000	$ 7,500	$ 162 plus 5% of excess over $ 5,000
$7,500	$10,000	$ 287 plus 6% of excess over $ 7,500
$10,000	$12,500	$ 437 plus 7% of excess over $10,000
$12,500	$17,600	$ 612 plus 8% of excess over $12,500
$17,600	$25,100	$1,020 plus 9% of excess over $17,600
$25,100	$43,900	$1,695 plus 10% of excess over $25,100
$43,900		$3,575 plus 11% of excess over $43,900

WHEREAS, the Montana Legislative Fiscal Analyst has determined that individual total tax liability, depending on the taxpayer, has been reduced between 12% and 19% as a direct result of tax indexing; and

WHEREAS, the Legislative Fiscal Analyst has further determined that the average individual reduction in Montana tax liability due to tax indexing is 15.5%; and

WHEREAS, the average tax liability in Montana for tax year 1983 was $412.55, indicating an average tax savings to each of Montana's personal income taxpayers of $63.95.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That tax indexing, in the form adopted by the voters in 1980, hereby receives the continued support of the Montana Legislature.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to United Press International, Associated Press, Montana Press Association, and the Montana Broadcasters Association.

Approved March 22, 1985.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO HONOR SENATOR DAVE MANNING UPON HIS RETIREMENT AFTER 52 YEARS OF SERVICE TO MONTANA BY REMEMBERING HIS DISTINGUISHED CAREER AND BY NAMING THE HIGHWAY BUILDING THE "DAVE MANNING HIGHWAY BUILDING".

WHEREAS, in the early months of 1932, Dave Manning, a young Hysham contractor, told his wife Ruth that serving in the Legislature " . . . would be an education and I'd like to try it just once"; and

WHEREAS, Dave Manning's "just once" legislative experiment led to 52 years of unbroken service to the people of Montana; and

WHEREAS, at the time of his resignation, Dave Manning had the longest period of continuous legislative service of any state legislator in the United States; and

WHEREAS, Dave Manning's legislative career exemplified leadership, both for the Legislature and for the people of his district, as he held the following positions during his career:

(1) Speaker of the House, 1939;

(2) Senate Minority Leader, 1951;

(3) Senate President Pro Tempore (ad interim), 1959 and 1963;

(4) Acting President of the Senate, 1959 and 1963;

(5) Acting Governor under Governors Ayers, Aronson, and Babcock;

(6) Chairman of numerous legislative committees; and

WHEREAS, Dave Manning always remained loyal to the interests and needs of his rural constituency, recognizing that he represented a lifestyle embracing acres of land, trees, coal, and cattle, and fought to save the "little federal system" of apportionment to protect our rural heritage; and

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WHEREAS, Dave Manning's leadership was of critical importance in the formulation of public policies relating to the development of the coal mining industry in southeastern Montana to assure that such development would be for the long-term benefit of the state; and

WHEREAS, Dave Manning played an important role in the enactment of Montana's 30% coal severance tax and was one of its strongest supporters; and

WHEREAS, Dave Manning quickly recognized the need for money from the coal tax to pay for one of the most expensive impacts of coal development, namely, roads; and

WHEREAS, Dave Manning was responsible for persuading the Legislature to set aside over $15,000,000 for coal area highway improvements; and

WHEREAS, Dave Manning once declared, in defense of the coal tax, that he didn't believe it would drive the coal companies out of the state, but if it did, at least they would leave on good roads; and

WHEREAS, Dave Manning put his many years of experience as an engineer and contractor to good use in the Legislature when addressing the question of the development of Montana's water and challenged the state to look to the future and undertake far-reaching plans for the development of this vital resource; and

WHEREAS, Dave Manning was a leader in the fight to get Montana out of the mud. When Dave was first elected, Hysham, like many Montana communities, was served only by a gravel and mud track, while today our communities are linked by modern paved highways and interstate thoroughfares passable with hardly a thought to the weather. Courageous, farsighted leadership from public servants like Dave Manning was vital to achieving the highway system we enjoy today.

WHEREAS, Dave Manning, working with his fellow legislators, was instrumental in creating an efficient modern headquarters for the managers of Montana's highway system; and

WHEREAS, the headquarters remains today without a name; and

WHEREAS, it is fitting to provide a permanent memorial to commemorate the distinguished career of Dave Manning.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature commends Senator Dave Manning for his long and distinguished career of service to the people of the State of Montana.

(2) That the Legislature expresses its appreciation to Ruth Clark Manning for her years of support and sacrifice.

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(3) That, to commemorate the long and distinguished career of Dave Manning, the Department of Administration shall name the Highway Building located at 2701 Prospect Avenue in Helena, Montana, the "Dave Manning Highway Building".

Approved April 1, 1985.

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE DESIGNATED DRIVER PROGRAM TO REDUCE THE INCIDENCE OF DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS.

WHEREAS, the Legislature recognizes the necessity to protect the public by preventing persons who are under the influence of intoxicants from operating vehicles on the public highways; and

WHEREAS, the Designated Driver Program is intended to reduce the incidence of cases of driving while under the influence of intoxicants by encouraging at least one passenger of every vehicle to refrain from using alcoholic beverages so that person may safely operate the vehicle conveying the group; and

WHEREAS, the beverage industry has indicated its willingness to participate in this program by providing the designated driver with complimentary nonalcoholic beverages on that occasion or with a coupon redeemable for a complimentary beverage of his choice on a later occasion when he is not the designated driver and thereby reduce the potential liability of operators of licensed establishments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Designated Driver Program offers a significant opportunity to improve traffic safety by reducing hazards caused by intoxicated drivers.

(2) That the Legislature encourages any group of persons participating in an activity involving consumption of alcoholic beverages to act responsibly by designating one member of the group to refrain from drinking alcoholic beverages on that occasion and to operate the vehicle conveying the group, to avoid endangering the lives of others.

(3) That licensed beverage establishments are encouraged to participate in the Designated Driver Program.

(4) That the Division of Motor Vehicles cooperate with the beverage industry and with other concerned citizens to publicize the Designated Driver Program.

Approved March 26, 1985.

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SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND SUPPORTING THE EFFORTS OF SENATOR DAVE MANNING ON BEHALF OF OFF-STREAM STORAGE HYDROPOWER DEVELOPMENT IN THE YELLOWSTONE RIVER BASIN AND DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COLLECT AND CENTRALIZE THE INFORMATION SUPPORTING THE GRAVITY DIVERSION CONCEPT, DOCUMENT FUTURE WATER NEEDS TO IMPLEMENT THIS CONCEPT, AND PURSUE PROJECT PLANNING AND FINANCING DISCUSSIONS WITH THE FEDERAL GOVERNMENT.

WHEREAS, the 47th Montana Legislature passed House Bill No. 861 directing an evaluation of a concept envisioned by Senator Dave Manning for developing off-stream hydropower generation in the Yellowstone River Basin; and

WHEREAS, the evaluation administered by the Department of Natural Resources and Conservation and conducted by Morrison-Maierle, Inc., identified 30 potential projects which satisfied the concept of gravity diversion of excess Yellowstone River flows to off-stream hydropower generation sites with eventual return of water to the Yellowstone River; and

WHEREAS, the dedicated and persistent efforts of Senator Dave Manning resulted in a substantial foundation of information supporting the concept, including assessments of hydropower potential, land ownership, site identification, preliminary engineering reports, cost estimates, and various informational reports; and

WHEREAS, a series of off-stream gravity diversion facilities along the Yellowstone River could harness the substantial energy-generation potential of the river's floodwaters and provide multipurpose benefits resulting from off-stream storage without restricting the normal river flows; and

WHEREAS, it is the policy of the State of Montana to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens; and

WHEREAS, it is in the best interest of the state to protect Montana's water in any future interstate proceedings by documenting future water requirements of the gravity diversion concept and by pursuing project planning and financing discussions with the federal government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana recognizes the outstanding efforts of Senator Dave Manning and supports his concept of gravity diversion, off-stream storage, power generation, and multipurpose use of Yellowstone River flood flows and excess unappropriated waters.

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(2) That the Department of Natural Resources and Conservation, within its staffing and budget limitations under legislative appropriation for this purpose, collect and centralize the information supporting the gravity diversion concept, document the future water needs of the gravity diversion concept, and pursue project planning and financing discussions with the federal government.

Approved April 1, 1985.

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE RURAL ELECTRIFICATION ADMINISTRATION ON ITS 50TH ANNIVERSARY.

WHEREAS, President Franklin Delano Roosevelt signed Executive Order Number 7037 on May 11, 1935, establishing the Rural Electrification Administration to bring lights and power to rural America; and

WHEREAS, at that time less than 6% of Montana's farms and ranches had central station electricity available to them; and

WHEREAS, since the first rural electric cooperative in Montana (at Sidney) energized its lines on December 17, 1937, 25 rural electric cooperatives and 16 rural telephone systems have been established in Montana that now serve over 90,000 farm and other rural and small town consumers with over 40,573 miles of line; and

WHEREAS, one Montana newspaper described the arrival of electrical power in rural Montana in this way:

"It was an excitement—a feeling of escaping from darkness and drudgery— a feeling of equality, of joining the modern world. This is what propelled those men and women into action—from dreaming to planning to action—walking the dusty roads signing up members and knowing the joy of seeing the lines and poles that brought lights and power come creeping over the mountains and across the endless plains. It was turning darkness into daylight and drudgery into the press of a button or flick of a switch. It was a rebirth, the likes of which will never be seen again in rural and small town Montana."

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That May 11, 1985, be named "Rural Electrification Day" in Montana in honor of the 50th anniversary of the Rural Electrification Administration.

BE IT FURTHER RESOLVED, that such day will recognize and honor the thousands of Montanans who worked at no profit and with no goal except to make a better way of life for their fellow citizens. It will honor the rural pioneers who, through their many years of often unrecognized

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labor, worked together to bring the blessings of modern electricity and telephone service to the Montana countryside and to the 300,000 Montanans now served by rural electric and telephone cooperatives.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the publisher of each newspaper in the state.

Approved April 1, 1985.

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S LIEN LAWS.

WHEREAS, Montana adopted its basic lien laws from the "Field Code" shortly after becoming a state; and

WHEREAS, the Legislature has added to and amended the basic lien laws of Montana, including the adoption of the Uniform Commercial Code in 1963, without comprehensive analysis of the various statutes that provide for liens; and

WHEREAS, there have been introduced in the 49th Legislative Session numerous and conflicting bills dealing with delayed recording, lien priorities, place of filing, centralized filing, purchase free of lien, and other subjects which indicate that Montana's lien laws are confusing and that relative lien priorities are possibly unfair; and

WHEREAS, it is essential to the economic growth of the State of Montana that the lien laws not hinder or obstruct the free flow of credit, especially in the agricultural area; and

WHEREAS, there is insufficient time during a regular legislative session to resolve the conflicting legislation or to provide a comprehensive, careful study of the existing lien laws, after considering all relevant factors, and there is insufficient time to receive information from the public, those concerned with the lien laws, and those obtaining and providing credit.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) examine Montana laws relating to liens, including Montana's basic lien laws and the Uniform Commercial Code;

(2) study the problems of delayed recording, lien priorities, conflicting lien priorities, and other related subjects;

(3) study the problems with place of filing and the possibility of centralized lien filing;

(4) obtain testimony and information relevant to Montana's lien laws as they may affect those who obtain or grant credit, including:

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(a) testimony and information addressing the conflicting positions of persons asking for preferential lien priority;

(b) the apparent conflict or lack of uniformity of present laws covering lien priorities; and

(c) any other matters pertinent to the effects of lien laws on such persons;

(5) study the laws of other states relating to liens and lien priorities, recordation, and other relevant matters;

(6) draft legislation to implement its recommendations, if necessary; and

(7) report its findings and recommendations to the 50th Legislature.

Approved April 10, 1985.

SENATE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF EDUCATIONAL TELEVISION IN MONTANA; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, Montana is the only state in the union that does not have state educational television; and

WHEREAS, most educational television viewed in Montana comes in the form of public television from the states of Washington, North Dakota, and Utah, is accessible to a limited number of Montanans, and carries a very limited amount of programming concerned with Montana issues; and

WHEREAS, educational television has proven to be an effective educational resource, yet few of our schools have access to it in any form; and

WHEREAS, state agencies and institutions, as well as private citizen groups, are pursuing many avenues to develop this educational resource locally; and

WHEREAS, there is no coordination of these projects, no plan for access for all citizens of Montana, and no coordination for best utilization of state funding.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study educational television in order to develop a plan that assures a coordinated effort by public agencies and institutions to provide access, including communication of Montana issues, for all citizens of the state.

BE IT FURTHER RESOLVED, that the study committee seek and receive the advice of the Department of Administration; the Office of the

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Commissioner of Higher Education; the Office of Public Instruction; the Montana State Library; the Montana Arts Council; the Montana Historical Society; the Board of Regents; the Board of Public Education; major organizations representing teachers, school administrators, school boards, and other educational personnel; the Montana Hospital Association; and citizens of Montana.

BE IT FURTHER RESOLVED, that the study committee report its findings and recommendations to the 50th Legislature.

Approved April 18, 1985.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE APPROPRIATE ROLE OF THE STATE IN REGULATING AND LICENSING CONTRACTORS AND PROMULGATING AND ENFORCING BUILDING CODES; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, the Legislature, in Title 50, chapter 60, MCA, created a program for the enforcement of a state building code; and

WHEREAS, the current statutes provide inadequate enforcement authority to properly carry out the intent of the statutes; and

WHEREAS, the requirement for but lack of adequate building code enforcement could expose the state to substantial liability; and

WHEREAS, the Legislature, in Title 37, chapter 71, MCA, created a program for the licensing and regulation of public contractors; and

WHEREAS, the requirement for but lack of regulation of contractors could expose the state to substantial liability.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the need for the state to adopt and enforce statewide uniform building codes;

(2) the types of publicly and privately owned structures that should be subject to inspection for code compliance;

(3) the need for state certification of local building code enforcement personnel;

(4) the need for the state to certify local building code enforcement programs;

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(5) the need to require that any plans for construction on privately owned buildings intended for use by the public must be prepared by a licensed architect, a licensed engineer, or both; and

(6) the need for and appropriate scope of regulation and licensing of contractors in public or private construction work, or both.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 20, 1985.

SENATE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR LIMITING APPLICATION OF THE CARGO PREFERENCE ACT OF 1954 BY THE UNITED STATES CONGRESS.

WHEREAS, agricultural exports are the lifeblood of American farmers; and

WHEREAS, agriculture accounts for 20% of this nation's gross national product, 20% of United States employment, and 20% of United States foreign exchange; and

WHEREAS, agricultural exports account for one-third of America's harvested cropland, 20% of all farm income, and one-fourth of all export shipping; and

WHEREAS, United States wheat production depends on export markets for more than 60% of annual utilization; and

WHEREAS, United States wheat exports have decreased steadily the past 3 years, from 48% of the world market in 1981 to only 37% in 1984; and

WHEREAS, a worldwide recession, heavy foreign debt burdens, limited foreign exchange, intense foreign competition, and the strong United States dollar have made American crops noncompetitive in the world marketplace; and

WHEREAS, the Cargo Preference Act of 1954 mandates shipment of certain concessional sales on United States flagships; and

WHEREAS, a recent court ruling has expanded the application of this act to blended credit sales and has opened the door to additional application in other concessional sales of United States commodities; and

WHEREAS, American flagships charge oceangoing rates that are two to four times higher than those of foreign vessels, and these higher rates add an average of 80 cents a bushel to the cost of American wheat, 76 cents a bushel for feed grains, and 80 cents a bushel for soybeans; and

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WHEREAS, costs associated with cargo preference subsidies are reflected in lower farmer income, higher farm program costs, and lost income to the allied agricultural industry; and

WHEREAS, higher ocean freight costs associated with cargo preference rules have already caused the cancellation of export sales to Egypt, Iraq, Morocco, and Tunisia and will in the future affect sales to many additional countries; and

WHEREAS, agricultural exports are the forerunner in combating this country's ever-growing imbalance of trade; and

WHEREAS, the purpose of the Cargo Preference Act of 1954 was to maintain a viable United States maritime fleet; and

WHEREAS, a strong United States maritime fleet is in the best interest, welfare, and security of the American public, and the cost incurred should be borne as such by the United States Department of Defense and not by a single component of our economy such as agriculture.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is strongly urged to enact legislation limiting application of the Cargo Preference Act of 1954 to concessional sales, such as P.L. 480, and prohibiting application of cargo preference to the United States Department of Agriculture's blended credit program, guaranteed credit programs, and other competitive sales programs.

BE IT FURTHER RESOLVED, that all costs incurred by cargo preference rules be borne by the Department of Defense rather than the Department of Agriculture.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the United States Secretary of Agriculture, the Chairmen of the United States Senate and House Agriculture Committees, United States trade representatives, and to the Montana Congressional Delegation.

Approved April 25, 1985.

SENATE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE THE FUNCTION OF LICENSING BOARDS FOR HEALTH-RELATED PROFESSIONS AND OCCUPATIONS AND TO MAKE RECOMMENDATIONS ON REDUCING THE NUMBER OF SUCH BOARDS.

WHEREAS, the Montana Department of Commerce administers separate licensing boards for 18 health-related professions and occupations; and

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WHEREAS, six of these boards issued or renewed approximately 25,000 licenses in 1984 while the other 12 issued or renewed only 2,700 licenses; and

WHEREAS, each licensing board incurs costs for board meetings, legal assistance, conducting examinations, issuing renewal notices and licenses, and bookkeeping and general administration, which are borne by licensees and passed on to their clients; and

WHEREAS, significant savings in the cost of licensing members of health-related professions and occupations could be achieved by creating a board of allied health professionals to license members of the smaller groups.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the role and function of the 18 boards established to license and regulate members of health-related professions and occupations.

(2) That the committee include in its study a consideration of at least the following:

(a) the number of licensees served by each board and the probability that this number will change substantially in the next several years;

(b) the specific duties other than licensing performed by each board and the number of full-time equivalent employees required to perform these duties;

(c) the extent to which standards for licensing are set and administered by state or national professional organizations;

(d) the extent to which the licensing and regulating functions assigned to each board can be carried out by persons who are not members of the licensees' occupation or profession;

(e) the feasibility of combining the boards serving relatively few licensees into one or more comprehensive boards; and

(f) an estimate of the cost savings that could be achieved by combining these boards into one or more comprehensive boards.

BE IT FURTHER RESOLVED, that the committee report its findings to the 50th Legislature, together with recommendations for legislation, if any, necessary to implement its findings.

Approved April 18, 1985.

SENATE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN MEMORY OF TIMOTHY J. SULLIVAN.

WHEREAS, Timothy J. "Sox" Sullivan was born in Butte, Montana, on January 16, 1931, and graduated from Boys' Central High School in that city in 1950. He served in the United States Navy during the Korean War, from 1953 to 1955; and

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WHEREAS, Timothy J. "Sox" Sullivan married Naomi Farthing in Butte in January of 1956. They have five children: Daniel, age 28; Susan, age 26; Thomas, age 25; Sheryl, age 24; and Patrick, age 17; and one grandchild: Jason, age 8; and

WHEREAS, Timothy J. "Sox" Sullivan was very active in youth sports programs and coached grade school football, basketball, and baseball for more than 20 years; coached American Legion and Jaycees League sports; and was named "Sports Leader of the Year" by the Jaycees in January, 1971; and

WHEREAS, Timothy J. "Sox" Sullivan was employed by the Butte, Anaconda, and Pacific Railway in Anaconda for several years and in 1967 began working in law enforcement in Anaconda. He was promoted to the rank of Sergeant in September of 1977 and to the rank of Lieutenant in March of 1983; and

WHEREAS, on February 10, 1985, at approximately 8:40 p.m., Lieutenant Timothy J. Sullivan was shot and killed while serving his community; and

WHEREAS, Lieutenant Sullivan was the second local law enforcement officer killed in the line of duty in Montana in the last 12 months; and

WHEREAS, the Anaconda-Deer Lodge Law Enforcement Department, Montana law enforcement agencies, and all Montanans feel the loss of Lieutenant Timothy J. Sullivan, exemplary as a peace officer and as a man, and extend to his family heartfelt condolences and respect.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Timothy J. "Sox" Sullivan, husband, father, and public servant, who died in the line of duty, is hereby honored and memorialized.

BE IT FURTHER RESOLVED, that the memory of Timothy J. "Sox" Sullivan serve as an example to all Montanans of a life of dedicated service and personal integrity.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Mrs. Naomi Sullivan and to the Anaconda-Deer Lodge Law Enforcement Department.

Approved April 23, 1985.

SENATE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ADOPT LEGISLATION AUTHORIZING THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION TO ENTER WATER AGREEMENTS FOR THE DELIVERY, USE, OR TRANSFER OF WATER WITHIN OR OUTSIDE THE RESERVATION.

WHEREAS, in establishing the system of Indian reservations and in negotiating treaties with the various tribes, the federal government impliedly reserved the waters on the reservations for use by the Indians; and

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WHEREAS, the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have entered into a compact quantifying the reserved water rights of the tribes; and

WHEREAS, as a condition to the Fort Peck-Montana Compact, the State of Montana has agreed to petition Congress, urging the enactment of legislation authorizing the Assiniboine and Sioux Tribes to enter water agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress enact the following legislation in substantially the following form:

"Sec. 2. For purposes of this Act, the term:

(a) "Fort Peck-Montana Compact" means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation ratified by the legislature of the State of Montana on _____, 1985 and by the Tribes on _____, 1985.

(b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(c) "Secretary" means the Secretary of the Interior.

(d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

Sec. 3.

(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort Peck-Montana Compact for a specified term, not to exceed fifty years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361. Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation,

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the Committee on Indian Affairs of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives.

Approved April 23, 1985.

SENATE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON LOCAL GOVERNMENT INFRASTRUCTURE.

WHEREAS, there is a critical need for accurate information on the condition of bridges, streets, roads, flood control facilities, drainage facilities, public transportation systems, administrative buildings, water systems, sewer systems, public health and safety facilities, communications systems, library facilities, jails, juvenile detention centers, and other public facilities in Montana counties, municipalities, and special districts; and

WHEREAS, the Governor's Task Force on Infrastructure developed a number of specific recommendations concerning the finance, operation, and maintenance of local government infrastructure; and

WHEREAS, the Governor's Task Force on Infrastructure recommended a comprehensive review, revision, and recodification of local government finance statutes; and

WHEREAS, an assessment of existing state assistance programs to local government for infrastructure planning, finance, and maintenance is needed, and changes in such programs may be appropriate; and

WHEREAS, an assessment and legislative consideration of such various local government infrastructure finance mechanisms as implementation of capital budgeting, use of lease-purchase long-term financing, user fee financing, and other financial sources is needed; and

WHEREAS, an assessment of the provision of local government public utility services, review and possible modification of statutes concerning use of fee and rate revenues from such services, and the effect of regulation by the Montana Public Service Commission on such local government services is appropriate; and

WHEREAS, a review of existing statutes concerning local government capital improvement planning is needed; and

WHEREAS, an assessment of construction standards of public facilities and the effect of these standards on the cost of construction and maintenance and local government liability is needed; and

WHEREAS, modifications of existing statutory requirements and administrative procedures concerning the planning, financing, and maintenance of local public facilities are appropriate.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) examine the recommendations of the Governor's Task Force on Infrastructure;

(2) examine various approaches and mechanisms to improve the planning, financing, and maintenance of local government infrastructure; and

(3) obtain testimony and information from the members of the Governor's Task Force on Infrastructure and from all parties expressing an interest in local government infrastructure and compile a record of such testimony and information.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 25, 1985.

SENATE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ALLOW STATE ASSUMPTION OF THE 8-CENT FEDERAL CIGARETTE EXCISE TAX SCHEDULED TO EXPIRE ON OCTOBER 1, 1985.

WHEREAS, President Reagan's executive budget proposal did not envision a continuation of the federal 8-cent excise tax on cigarettes scheduled to expire on October 1, 1985; and

WHEREAS, Congress has passed legislation that provides for the federal cigarette excise tax to decrease by 8 cents, and thereby states would be allowed to assume the tax without imposing a new tax on consumers; and

WHEREAS, state assumption of the federal cigarette excise tax would represent an important source of revenue for state government to partially offset reduced federal revenue; and

WHEREAS, 32 states are considering or have already enacted legislation to assume the federal cigarette tax; and

WHEREAS, the Reagan Administration announced to the National Governor's Association winter meeting that it is interested in having states assume that portion of the federal cigarette excise tax that is scheduled to expire; and

WHEREAS, OMB Director David Stockman has stated unequivocally that the Administration will take a hard line against any reinstatement of the federal excise tax; and

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WHEREAS, the National Conference of State Legislatures adopted a resolution in March of 1985 urging Congress to allow the federal excise tax on cigarettes to sunset.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana strongly urges the Congress of the United States to allow the 8-cent federal excise tax on cigarettes to expire on October 1, 1985, and thereby provide the opportunity for state governments to assume this tax for the benefit of their citizens.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States and to Montana's United States Senators and Representatives.

Approved April 25, 1985.

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO CONGRATULATE AND HONOR THE FIGHTING BOBCATS OF MONTANA STATE UNIVERSITY, THIS YEAR'S NATIONAL CHAMPIONS OF DIVISION I-AA FOOTBALL.

WHEREAS, the Legislature of the State of Montana always exercises careful judgment in its recognition of excellence; and

WHEREAS, the football team of Montana State University has exhausted the list of its competitors; and

WHEREAS, the "topsy turvy" Bobcats have demonstrated the resilience of the human spirit in rebounding from conference cellar-dwellers to national champions in a single year; and

WHEREAS, the varsity Bobcats excelled simultaneously in the classroom and on the gridiron; and

WHEREAS, the championship performance of the Bobcats reflects favorably upon the entire State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives, on behalf of all Montanans, extend their hearty congratulations to the Montana State University Bobcat football team, National Champions of Division I-AA.

BE IT FURTHER RESOLVED, that the people of Montana give thanks to the Bobcats for prolonging the autumn football season into the Montana winter.

BE IT FURTHER RESOLVED, that special note be made of the following players, coaches, and staff at Montana State University, and that copies of this resolution be sent by the Secretary of State to each of them.

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Players:

1 Mark Carter, WA
2 Tom White, WY
3 Dirk Nelson, KS
4 Tim Clements, MI
5 Tony Moore, WA
6 Doug McQuarter, WA
7 Mark Page, MT
9 Tyler Winter, WI
10 Terry Thelen, MT
11 Bob Bashaw, WA
12 Kelly Bradley, MN
13 Kelly Sherwin, MT
14 Greg Andall, WA
15 Duffy Cox, WA
16 Jeff Michael, WA
17 Derrick Abell, CA
18 Kelly Davis, MT
19 Jeff Mayfield, MT
20 Rob Pouliot, MT
22 Steve King, WA
23 Louis Antoinne, CA
24 Tom Mahlum, MT
25 Eric Miller, WA
26 John Kinna, MT
27 Clete Linebarger, MT
28 Thomas Coty, CA
29 Doug Kimball, MT
30 Toby Petty, WY
31 Ken Lang, MT
32 Chinedu Ohan, Eng.
33 David Pandt, MI
35 Rodney Holland, WA
36 Michael Bowie, WA
37 Tom Richards, CO
38 Bob Kimball, MT
39 Jesse Jones, WA
40 Bob Byrne, MT
41 Mark Harwood, MT
42 Kirk Timmer, MT
43 William Johnson, CA
44 Darin Dietrich, WA
45 Mike Callaghan, MT
46 Kevin Kirwin, MT
47 Joe Roberts, MT
48 Frank Goettlich, MT
49 Cory Lamey, MT
50 Jason Hartford, WA
51 Jon Wanago, MT
53 Greg Bennett, WA
54 Slade House, WA
55 Robb Fellows, MT
56 Tim Ellinghouse, MT
57 Zach Peters, MT
58 Tom Jacobs, MN
59 Lonnie Burt, MT
60 Todd Vasey, NV
61 Bob Culliton, WA
62 Doug Richards, MT
63 Dave Kuchar, MN
64 Bruce Brockmann, WA
65 Jamie Smith, CO
66 Bill Schmidt, MT
68 Mark Fellows, MT
69 Brent Jolly, WA
71 Troy Timmer, MT
72 Steve Cornellier, MT
73 Bruce Randall, MT
74 Don Leake, MN
76 Brian Kaufman, MT
79 Tim Northway, WI
80 Pat Bergman, MT
81 Rob Fulton, WA
82 Duane Baker, WA
83 Bill Paul, MT
84 Shawn Bohannan, WA
85 Matt Micklewright, MT
86 Joe Bignell, MT
87 Jame Todd, MT
88 Joe Cerny, CA
89 Brent Bateman, MT
91 Pat "Tex" Sikora, MT
92 Shane Quilling, MT
93 Mark Gibson, MT
95 Joel Grace, WY
96 Ron Hanson, MT
97 Terry Martinson, WA
98 Kip Halversen, WY
99 Greg Wilks, CA

(42 players from Montana)

Assistant Coaches:

Steve Carson
Bill Diedrick

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Dan Davies
Mike Kramer
Joe Yanowsky
Roy Wittke
J. G. Aegerter
Gary Crum
Ron Harris

Head Coach: Dave Arnold

Athletic Director: Tom Parac

University President: Dr. William J. Tietz

Approved March 13, 1985.

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AGENCIES TO ADOPT POLICIES HAVING THE FORCE AND EFFECT OF LAW AS ADMINISTRATIVE RULES.

WHEREAS, Article II, section 9, of the Montana Constitution guarantees to the people the right to know; and

WHEREAS, the State of Montana is committed to the concept of open government where every person is allowed to participate; and

WHEREAS, the purpose of the Montana Administrative Procedure Act is to give notice of governmental action and the opportunity to express one's opinion regarding that action; and

WHEREAS, although government must be concerned about the proliferation of rules regulating the people, this concern is outweighed by considerations of openness and certainty in the public's dealings with government; and

WHEREAS, policies enforced as law but not formally adopted as rules have been held invalid by the courts; and

WHEREAS, a survey conducted by the Administrative Code Committee has shown that most agencies are utilizing policies not formally adopted as rules.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That policies having the force and effect of law but not formally adopted as rules must be adopted as rules by agencies by October 1, 1987.

Approved March 9, 1985.

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HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AMEND JOINT RULE 11-3, RELATING TO STATEMENTS OF INTENT, TO MAKE THE JOINT RULES COMPATIBLE WITH STATUTORY AMENDMENTS MADE BY HOUSE BILL NO. 9, WHICH PROVIDES THAT A STATEMENT OF INTENT NEED NOT ACCOMPANY A DELEGATION OF AUTHORITY EXTENDING PREVIOUSLY ENACTED RULEMAKING AUTHORITY TO NEWLY ENACTED OR AMENDED AGENCY DUTIES.

WHEREAS, the Legislative History Act now requires that a statement of intent accompany certain delegations of authority to administrative agencies, including delegations of rulemaking authority; and

WHEREAS, section 5-4-402, MCA, of that Act was amended in 1983 to provide that a statute enacted or amended may not be implemented by an administrative rule, even in an area in which a state agency has existing rulemaking authority, unless the statute enacted or amended is accompanied by a delegation of authority extending such authority to the statute as enacted or amended; and

WHEREAS, this amendment, in addition to its intended purpose of providing notice that a bill involves rulemaking, creates a strong implication that a statement of intent must accompany every bill that merely extends an existing delegation of rulemaking authority; and

WHEREAS, House Bill No. 9 has been introduced to provide that a statement of intent is not required for a bill containing an extension of an existing delegation of rulemaking authority; and

WHEREAS, the Joint Rules should be made compatible with the statutory changes proposed in House Bill No. 9.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Joint Rule 11-3 be amended to read:

"11-3. Statement of intent to accompany bill — when — how. A statement shall accompany a bill as follows:

(1) Statements of intent are required for bills delegating *new* rulemaking or licensing authority. The statement shall be entered on ALTER, printed on paper of the same color and in the same manner as the bill, and shall be attached to the bill. The statement shall be printed on paper of the same color as the bill and attached to the bill on all subsequent printings of the bill.

(2) The standing committee of the house in which the bill originates is responsible for authoring a statement of intent for a bill requiring one."

(2) That this resolution applies retroactively to all bills introduced on or after January 7, 1985.

Approved February 13, 1985.

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HOUSE JOINT RESOLUTION NO. 5

A RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE ARMY CORPS OF ENGINEERS TO COMPLETE A PROGRAM OF BANK PROTECTION, STABILIZATION, AND MAINTENANCE ALONG THE MISSOURI, YELLOWSTONE, AND BIGHORN RIVERS IN MONTANA.

WHEREAS, the Flood Control Act of 1944 assured all 10 states within the Missouri River Basin benefits under a control and management program, commonly known as the Pick-Sloan Plan; and

WHEREAS, the Pick-Sloan Plan provided for major flood control, navigational, recreational, and power supply benefits for states below Sioux City, Iowa, through construction of large reservoirs in states above that point; and

WHEREAS, the Pick-Sloan Plan provided that in return for sacrifices of land necessary to accommodate the flood control protection and other benefits, the states above Sioux City, Iowa, would be assured of adequate water supplies for domestic and agriculture use, as well as power supply and recreational benefits; and

WHEREAS, construction of facilities under the Pick-Sloan Plan has resulted, to date, in $1,659,000,000 of flood protection, which continues to accrue to downstream interests, and has allowed downstream interests to use the original floodplain of the Missouri for the development of industrial, municipal, and agricultural uses; and

WHEREAS, the Army Corps of Engineers has stabilized and continues to maintain the channel of the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, in the name of navigation and at federal cost; and

WHEREAS, under the Pick-Sloan Plan, the state of Montana has sacrificed some 589,000 acres of land; and

WHEREAS, additional lands adjacent to the Missouri, Yellowstone below its confluence with the Bighorn, and Bighorn Rivers and their reservoirs have been and will continue to be seriously eroded and permanently lost to the citizens and state of Montana because of releases of clear water capable of eroding and transporting large amounts of soil; and

WHEREAS, the original Pick-Sloan Plan included protection and maintenance of the riverbanks:

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress, with the assistance of the Army Corps of Engineers, the Montana Department of Natural Resources and Conservation, the Montana Department of Fish, Wildlife, and Parks, and the local soil and water conservation districts, is urged to reevaluate the bank stabilization program along the Missouri, Yellowstone below its confluence with the Bighorn, and Bighorn Rivers in Montana, to reexamine

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the Pick-Sloan Program, to develop methods of financing for comprehensive bank stabilization along these rivers, and to provide funds sufficient to construct and maintain the works of improvement.

(2) That the Army Corps of Engineers is urged to diligently pursue implementation of the bank protection program, to be approved and monitored by the Montana Department of Natural Resources and Conservation and the Montana Department of Fish, Wildlife, and Parks.

(3) That the Secretary of State forward copies of this resolution to the Montana Congressional Delegation, the Army Corps of Engineers, the United States Department of the Interior, the Montana Association of Conservation Districts, the Montana Board of Natural Resources and Conservation, and the Governors of Montana, Nebraska, North Dakota, and South Dakota.

Approved February 16, 1985.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRESIDENT AND CONGRESS OF THE UNITED STATES TO CONTINUE THEIR EFFORTS TO HALT THE PERSECUTION AND SEVERE REPRESSION OF THE BAHA'IS IN IRAN.

WHEREAS, America and the world are increasingly alarmed and appalled at the persecution and severe repression of the Baha'is in Iran; and

WHEREAS, since the Islamic revolution came to power in 1979, over 170 Baha'is have been executed or assassinated and 750 Baha'is are currently imprisoned, many of whom are being subjected to brutal tortures, for no other reason than their adherence to the Baha'i faith; and

WHEREAS, all Baha'i holy places, properties, and cemeteries have been confiscated or destroyed; and in addition much personal property, including savings of Baha'is, has been confiscated; and

WHEREAS, jobs have been denied Baha'is and their business and trade licenses have been suspended; and

WHEREAS, no child of Baha'i parentage has been allowed to register for school at any level; and

WHEREAS, an edict issued by Iran's Prosecutor General has far-reaching implications that threaten the lives and property of 300,000 Baha'is in Iran.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President and Congress of the United States continue their support of the United Nations Human Rights Commission and its efforts to halt the persecution of the Baha'i minority in Iran;

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BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the President of the United States, each member of the Montana Congressional Delegation, the Baha'i International Community, and the Spiritual Assembly of the Baha'is of Helena.

Approved January 29, 1985.

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House and Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following legislative employee positions are classified in the grades indicated and, subject to paragraph (5), are entitled to be paid accordingly. The grades are those set forth in section 2-18-312, MCA.

Grade 20

Chief Clerk of the House

Secretary of the Senate

Grade 17

Sergeant-at-arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House

Assistant Secretary of the Senate

Aide to the Senate Minority

Aide to the Senate President

Aide to House Republican Leader

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Grade 11

Legislative Assistant

Chief Stenographer

Bills Clerk

Journal Clerk

Assistant Sergeant-at-arms

Secretary to the following:
President, Speaker, Secretary of the Senate, Chief Clerk, Senate Majority Leader, Republican Floor Leader, Democratic Floor Leader, and Minority Leader

Grade 10

Bills Coordinator

Assistant Chief Stenographer

Assistant Journal Clerk

Assistant Bills Clerk

Committee Secretary

Bills Distributor

Amendments Coordinator

Legislative Telephone Operator

Status Input Technician

Grade 9

Assistant Bills Coordinator

Assistant Bills Distributor

Assistant Amendments Coordinator

Assistant Telephone Operator

Grade 8

Stenographer

Grade 7

Assistant Status Input Technician

Reading Clerk

Supply Clerk

Posting Clerk

Typist

Security Guard

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Grade 6

Proofreader

Clerk-typist

Steno Aide

Grade 5

Parking Attendant

Page Supervisor

Grade 1

Permanent Page

$3.50 an hour

Page

(2) That positions classified at Grade 17 and above are considered professional or "exempt" positions and are not subject to overtime pay. Employees in such positions must receive the salary as shown in the salary schedule subject to paragraph (5), for 48 hours a week regardless of the number of hours worked.

(3) That positions classified below Grade 17 are subject to overtime pay and recorded hours of work. Hours over 40 a week worked by an employee so classified will be compensated for at the rate of 1 ½ times the employee's regular hourly wage.

(4) That an employee with no previous legislative experience must be classified at Step 2 of the appropriate grade; however, no employee may be paid less than the federal minimum wage. For each year of legislative experience, an employee must be advanced one step to determine the applicable step within the grade.

(5) That no additional benefits, such as sick leave, vacation leave, holiday pay or time off, health insurance, or longevity allowances accrue to legislative employees. In lieu of such benefits available to other state employees, legislative employees are paid an additional 20 cents an hour.

(6) That section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature.

(7) That a Chaplain be paid for 2 hours for each legislative day served.

(8) That Public Employees Retirement System benefits are available at the option of the employee if the employee pays both the employee and employer contribution.

Approved January 16, 1985.

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HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE CENTENNIAL OF THE MONTANA NATIONAL GUARD AND URGING PUBLIC RECOGNITION OF THE SPLENDID COMBAT RECORD AND ACCOMPLISHMENTS OF THE MONTANA NATIONAL GUARD IN SERVING THE PEOPLE OF THE STATE OF MONTANA.

WHEREAS, the American tradition of the citizen-soldier took root in Montana with the service of militia organizations during Red Cloud's War of 1865-68 and in the Nez Perce Campaign of 1877; and

WHEREAS, the Montana National Guard was formally organized and authorized by the Legislative Assembly of the Territory of Montana on March 10, 1885; and

WHEREAS, the 1st Montana Infantry Regiment, Montana National Guard, served with distinction during the Spanish-American War and the Philippine Insurrection, 1898-99, thereby winning two campaign streamers for the regimental standard; and

WHEREAS, the 163rd Infantry Regiment, Montana National Guard, served in France during World War I, and by so doing added another campaign streamer to the regimental standard; and

WHEREAS, the 163rd Infantry Regiment, Montana National Guard, served with distinction in the South Pacific during World War II, adding two campaign streamers plus a Distinguished Unit streamer to the regimental standard; and

WHEREAS, units of the Montana National Guard have served the citizens of Montana in more than 25 declared civil emergencies and natural disasters since 1893; and

WHEREAS, March 10, 1985, marks the centennial of the Montana National Guard, and such occasion merits grateful recognition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That March 10, 1985, be commemorated in honor of the centennial anniversary of the Montana National Guard.

BE IT FURTHER RESOLVED, that in acknowledgement of the splendid combat record and accomplishments of the Montana National Guard during its 100-year history, the citizens of Montana be urged to recognize and reflect upon the courage, dedication, and sacrifice of the men and women who have served and are now serving as members of the Montana National Guard.

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BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the publisher of each newspaper in the state, to the Governor, to the Adjutant General of the Department of Military Affairs, and to each command post of the Montana National Guard.

Approved March 9, 1985.

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT DISPLAY OF A BRONZE TABLET ON THE SAM W. MITCHELL BUILDING ACKNOWLEDGING THE 1946 GIFT OF THE BUILDING SITE FROM THE SONS AND DAUGHTERS OF MONTANA PIONEERS.

WHEREAS, the Sons and Daughters of Montana Pioneers, a nonprofit corporation of Montana with its principal office in Helena, Montana, is duly chartered for patriotic, historic, and benevolent purposes, among whose objectives are to assist in the preservation of the memories of pioneer life and the settlement of Montana; to aid in projects designed to aid, protect, and safeguard historical records; to conduct historical research into pioneer history; and to honor the pioneer men and women who founded the State of Montana; and

WHEREAS, as part of its program to accomplish these purposes, the Sons and Daughters of Montana Pioneers acquired certain real estate adjacent to the State Capitol grounds; and

WHEREAS, by deed dated April 15, 1946, and filed for record on May 14, 1946, and by further deed dated June 16, 1955, and filed in book 275, pages 26 and 27 of the books and records of the Clerk and Recorder of Lewis and Clark County, 76 lots in Lewis and Clark County adjacent to the State Capitol complex were deeded to the State of Montana; and

WHEREAS, the Veterans and Pioneers Memorial Building and the Sam W. Mitchell Building were constructed on a portion of these lots; and

WHEREAS, the gift of the building site by the Sons and Daughters of Montana Pioneers should be appropriately acknowledged by placing a bronze tablet within the interior of the main lobby of the Sam W. Mitchell Building; and

WHEREAS, section 5-17-102(2), MCA, provides that no such item shall be permanently displayed unless authorized by the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature gives its authorization to permanently display a bronze tablet in the interior of the main lobby of the Sam W. Mitchell Building with the following inscribed thereon:

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THE STATE OF MONTANA
GRATEFULLY ACKNOWLEDGES THE
GIFT OF THIS BUILDING
SITE FROM THE SONS AND
DAUGHTERS OF MONTANA PIONEERS
DONATED 1946

Approved March 26, 1985.

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA AGRICULTURAL EXPERIMENT STATION TO DEVELOP A COMPREHENSIVE RESEARCH PROGRAM IN SUSTAINABLE AGRICULTURE.

WHEREAS, the costs of agricultural chemicals, including fertilizers, herbicides, insecticides, and fungicides, have risen dramatically; and

WHEREAS, the fertility of much of Montana soils is declining due to erosion, saline seep, depletion of nutrient reserves, declining levels of organic matter, soil compaction, and other factors; and

WHEREAS, agricultural research and the experience of low-chemical farmers in Montana and the United States have shown that farm operating costs can be lowered and soil fertility improved by adopting "sustainable agricultural" practices that are based on low- and no-chemical agricultural methods, crop rotations, nutrient recycling, etc.; and

WHEREAS, food safety and on-farm health are concerns shared by consumers and farmers alike; and

WHEREAS, low-chemical, sustainable agricultural practices are a promising means of addressing the problems stated above; and

WHEREAS, applicable research on low-chemical, sustainable agriculture is limited in Montana at this time; and

WHEREAS, knowledge on sustainable agriculture as it is applicable to Montana is difficult for farmers and ranchers to obtain.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Agricultural Experiment Station is requested to:

(1) identify areas of research needed by Montana farmers and ranchers desiring to make a transition to profitable, low-chemical farming techniques, including but not limited to alternative cropping practices; methods for building soil organic matter and natural soil fertility; nonchemical pest control; livestock production without hormones, growth stimulants, or antibiotics; comparative economics of chemical and nonchemical farming; and marketing of organically grown Montana agricultural products; and

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(2) incorporate, to the extent feasible, a comprehensive research program in low-chemical, sustainable agriculture applicable to Montana addressing the needs identified in subsection (1) into its existing research programs.

BE IT FURTHER RESOLVED, that the Montana Cooperative Extension Service is requested to make readily available all pertinent existing information on sustainable agriculture to Montana agriculturists and to widely disseminate future sustainable agriculture research findings of the Montana Agricultural Experiment Station.

Approved March 23, 1985.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING REPEAL OF THE PROVISIONS OF THE 1984 TAX REFORM ACT AND INTERNAL REVENUE SERVICE REGULATIONS REQUIRING MILEAGE AND USE RECORDS FOR BUSINESS VEHICLES.

WHEREAS, the 1984 Tax Reform Act and recent IRS regulations implementing the act require records be kept for "each business use" of a vehicle, which must show date, mileage, destination, driver, and purpose; and

WHEREAS, a business failing to keep proper records is subject not only to loss of investment credit and deductions for depreciation, fuel, insurance, repairs, and other expenses, but also is subject to an automatic 5% negligence penalty; and

WHEREAS, because the law further requires that a person who employs a professional tax preparer must certify that he has kept the proper vehicle log for each vehicle for which credits or deductions are claimed, the person may also be subject to civil and criminal penalties for fraud and false swearing if the IRS later determines that such records were not kept, or were not kept properly; and

WHEREAS, in many situations it is technically necessary but practically impossible to ensure that employees maintain the proper records for vehicles they use; and

WHEREAS, most agricultural businesses have many vehicles used primarily for particular purposes, such as fuel transportation, livestock feeding, chemical application, etc., each of which would require separate logs if they are capable of being used for any other personal use; and

WHEREAS, for a farmer or rancher to record the date, mileage, destination, driver, and purpose for each trip to a field, each trip checking or feeding livestock, each trip along a fenceline, or each trip for machinery repairs is unduly burdensome and in many cases impossible; and

WHEREAS, many farmers and ranchers, being independent, may simply refuse to keep the records and will lose valuable credits and deductions merely for refusal to keep such records.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress and the IRS are urgently requested to repeal the provisions of the 1984 Tax Reform Act and the implementing IRS regulations requiring records for mileage and use for business vehicles.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to each member of Montana's Congressional delegation.

Approved February 19, 1985.

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO CERTAIN CONSTRUCTION PROJECTS AT THE UNIVERSITY OF MONTANA, INCLUDING IMPROVEMENT OF RIVERFRONT PROPERTY.

WHEREAS, section 18-2-102, MCA, requires legislative consent for construction projects in excess of $25,000; and

WHEREAS, section 18-2-102, MCA, authorizes use of a joint resolution to express legislative consent when no appropriation is required; and

WHEREAS, the University of Montana wishes to carry out the four construction projects described below, for which legislative appropriations are not required.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives of the State of Montana consent to the following four construction projects at the University of Montana:

(1) improvement of riverfront property by construction of recreational fields;

(2) creation of office space for the Maureen and Mike Mansfield Center by remodeling available space in the Maureen and Mike Mansfield Library;

(3) expansion of parking lot W to provide additional parking spaces; and

(4) creation of additional classroom space by remodeling of existing laboratory space in the Chemistry/Pharmacy Building.

Approved March 26, 1985.

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HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE PRIORITY REFERRAL AND PLACEMENT FOR PREGNANT TEENAGERS.

WHEREAS, teenage pregnancy and young, single parenting are recognized as a state as well as a national crisis, with 4 in 10 teenage girls becoming pregnant and with 97% of those who carry their pregnancies to term choosing to parent their children; and

WHEREAS, teenage pregnancy often leads to an increase in the school dropout rate, poor job skills, and a life of poverty; and

WHEREAS, young, single parenting often leads to early marriage, divorce, poverty, frustration, and child abuse or neglect; and

WHEREAS, the State of Montana sets a high priority on using available comprehensive services to assist young, single, pregnant women and young, single mothers and their children; and

WHEREAS, comprehensive services have proven capable of changing the cycle of poverty and abuse for 50% to 80% of the clients served; and

WHEREAS, the State of Montana wishes to take advantage of the opportunity of assisting these young women and their children in improving their lives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature strongly urge the Department of Social and Rehabilitation Services to provide priority referral and placement for comprehensive services for young, single, pregnant women and young, single mothers.

(2) That the Legislature urge that these comprehensive services include prenatal care, indepth counseling to explore options as to parenting or planning adoption, and parenting classes and supervision through which skills can be learned and practiced to provide the best possible parenting for the children involved.

Approved April 1, 1985.

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING 50 YEARS OF THE SOIL AND WATER CONSERVATION MOVEMENT IN MONTANA.

WHEREAS, much of Montana's heritage is based on agriculture; and

WHEREAS, agriculture, being the state's number one industry, has faced many problems and challenges due to climatic conditions, farming practices, wind and water erosion, soil characteristics, and economic hardships; and

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WHEREAS, the Soil Conservation Service and its employees have provided valuable assistance to farmers, ranchers, industry, municipalities, and private individuals to correct and avoid many of these problems and to lessen the impacts on all of Montana's citizens; and

WHEREAS, the 50th anniversary of America's soil and water conservation movement will be celebrated during 1985.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Soil Conservation Service be recognized and commended for 50 years of dedicated service to the people in Montana and to the nation.

That a copy of this resolution be sent by the Secretary of State to the State Soil Conservation Service Office in Bozeman.

Approved March 26, 1985.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING COMPREHENSIVE FEDERAL TAX REFORM AND SIMPLIFICATION.

WHEREAS, under the current federal tax structure all taxpayers face higher taxes in order to make up for the revenue lost by numerous special preferences, exceptions, and tax shelters used by a relatively small number of taxpayers; and

WHEREAS, these tax shelters are the incentive for particular investments which may not be sound economic investments in their own right; and

WHEREAS, the current federal tax system promotes speculation in agriculture for the purposes of tax shelters; and

WHEREAS, such speculation may undercut the competitive position of family owned and operated farms and ranches; and

WHEREAS, the federal tax system is complex and inequitable, reduces economic incentives, hampers economic growth, and is perceived to be so unfair that taxpayer morale and voluntary compliance have been seriously undermined.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature supports comprehensive federal tax reform and simplification to broaden the tax base and lower tax rates for the majority of taxpayers.

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BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Montana's Congressional Delegation, the United States Secretary of the Treasury, and the President of the United States.

Approved April 8, 1985.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON ALCOHOL REGULATION AND YOUTHS.

WHEREAS, Montana cannot comply with the federal mandate to establish a drinking age of 21 by the October 1986 deadline because it requires a state constitutional amendment; and

WHEREAS, statistics on the 21-year drinking age are contradictory, particularly as they relate to Montana; and

WHEREAS, both national and state studies have shown that when Montana raised its drinking age from 18 years to 19 years in 1979, fatal accidents and nighttime fatal accidents involving 18- and 19-year-old drivers increased substantially; and

WHEREAS, there is considerable evidence that the existence of a uniform drinking age itself causes increased highway deaths among young drivers of that same age; and

WHEREAS, there is some evidence that states with graduated drinking ages, typically 18 years for beer or light wine and 21 years for liquor, have fewer highway deaths involving young drivers, lower alcoholism rates, and no association between their drinking ages and increased highway deaths among any age group; and

WHEREAS, national experts have recommended a graduated approach based on decreasing stages of adult supervision of the youthful use of alcohol as the youth approaches the legal drinking age, and the literature on teenage alcohol use strongly shows that family supervision is a key factor in preventing alcohol problems among youths; and

WHEREAS, the federal bill mandating a drinking age of 21 years is currently under challenge by the State of South Dakota (State of South Dakota v. Elizabeth H. Dole, Secretary, U.S. Department of Transportation, Civil Action No. 84-5137, U.S. District Court, District of South Dakota, Western Division) as an intrusion on the rights of states to regulate intoxicating liquors as allegedly guaranteed by the Twenty-first Amendment to the United States Constitution; and

WHEREAS, Montana's current laws on alcohol regulation and youths are often archaic, contradictory, and ineffective; and

WHEREAS, neither these problems of law nor the design of legislation necessary to implement a new drinking age approach, whether graduated or

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uniform, can possibly be resolved during the 1985 legislative session because of the need for careful study and input from a variety of interests.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) examine current Montana laws on alcohol regulation and youths;

(2) examine the various approaches to establishing a drinking age, whether graduated, uniform, or otherwise;

(3) obtain testimony and information relevant to the drinking age issue from all parties expressing an interest in the issue and compile a record of such testimony and information;

(4) draft legislation to implement its recommendations, if necessary; and

(5) report its findings and recommendations to the 50th Legislature.

Approved April 1, 1985.

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE CAMP FIRE ORGANIZATION ON ITS 75TH BIRTHDAY.

WHEREAS, the national Camp Fire organization will be celebrating its 75th birthday on March 17, 1985; and

WHEREAS, Camp Fire groups have been active in Montana since 1912; and

WHEREAS, the purpose of Camp Fire is to work to meet the needs of youth through a variety of programs; and

WHEREAS, in Camp Fire, recognition of accomplishments is combined with building a youth's skills, self-esteem, and recognition of personal abilities; and

WHEREAS, Camp Fire teaches its youth citizenship, responsibility, and an attitude of service to the community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature commends Camp Fire for programs, services, and opportunities for youth in Montana and congratulates the organization on the celebration of its 75th birthday.

Approved April 1, 1985.

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HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE MONTANA CONGRESSIONAL DELEGATION SUBMIT TO THE 99TH UNITED STATES CONGRESS LEGISLATION FOR ALLOCATING WILDERNESS AREAS ON FEDERAL LANDS IN MONTANA.

WHEREAS, the Federal Land Policy and Management Act of 1976 and the National Forest Management Act of 1976 state that public lands will be utilized in accordance with the Multiple-Use Sustained-Yield Act of 1960; and

WHEREAS, the State of Montana contains 16.7 million acres of national forest lands that are an important part of our heritage and economic base; and

WHEREAS, federal lands managed under multiple use offer many and varied resources of fossil fuels, rangeland, forests, wilderness, water, wildlife, fish, and many other valuable amenities and commodities; and

WHEREAS, these federal lands provide millions of hunters, fishermen, campers, picnickers, hikers, backpackers, snowmobilers, and boaters the opportunity to pursue recreational activities, including wilderness experiences; and

WHEREAS, these federal lands contain 12.9 million acres classified as commercial forests; and

WHEREAS, these national forest lands have been reviewed and studied for the past 14 years or more in accordance with the Roadless Area Review and Evaluation (RARE) process that started in 1970 to determine wilderness suitability and culminated in the RARE II report in 1979; and

WHEREAS, the 1979 RARE II report was contested in the 9th District Circuit Court in *California v. Block* in October 1982, and the Forest Service's RARE II procedure was declared deficient, resulting in the Forest Service having to repeat the RARE procedure; and

WHEREAS, this has affected and delayed, and continues to affect and delay, some recreational and resource development activities within the 5.2 million acres of roadless areas on federal lands in the Forest Service's Northern Region, including Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That omnibus wilderness legislation be developed and submitted to the 99th Congress by the Montana Congressional Delegation and that areas that do not receive wilderness designation be made available for multiple-use management activities.

(2) That the 49th Montana Legislature proposes that the wilderness legislation be introduced and passed by the 99th Congress.

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(3) That the Secretary of State send copies of this resolution to the President of the United States and to each member of the United States Congress.

(4) That the Secretary of State send copies of this resolution to the presiding officers of the legislatures of the states of Idaho, Wyoming, North Dakota, South Dakota, Washington, Oregon, Utah, Colorado, and California.

Approved March 30. 1985.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF TRUSTEES OF EACH SCHOOL DISTRICT IN THE STATE TO APPOINT A NONVOTING STUDENT MEMBER TO THE BOARD TO REPRESENT THE STUDENT BODY OF THE SCHOOL DISTRICT.

WHEREAS, the Legislature and the Montana education community recognize that the most valuable resource for achieving "excellence in education" in Montana is the student; and

WHEREAS, student representation on local school boards has never been implemented on a statewide basis, although the Board of Public Education and the Board of Regents currently have active student members on their respective boards; and

WHEREAS, the educational process dominates a large part of the life of a school-age person, and as a citizen, that person should be allowed representation in the major decisions governing the educational process; and

WHEREAS, when students feel that they have influence over their environment and that their opinions are respected, the result is an atmosphere of greater trust, civility, and mutual respect; and

WHEREAS, through involvement in the decisionmaking process of a school district, the student is not only contributing valuable input not otherwise available, but is also receiving first-hand knowledge of the governmental process and the educational process; and

WHEREAS, students are deeply concerned about the education they are receiving and wish to present their views on educational reform.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature stands strongly in favor of student representation on each school district board of trustees.

(2) That the Legislature urges each school district board of trustees in the state to appoint a nonvoting student member to the board to represent the student body of the school district.

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(3) That the executive secretary of the Board of Public Education, the executive secretary of the Montana Association of Student Councils, and a member of the Office of Public Instruction meet and confer to define the role of the student member by using as a guideline the existing policy set by the Board of Public Education regarding student representation.

(4) That copies of this resolution be sent by the Secretary of State to:

(a) each local school board chairman in the State of Montana;

(b) each accredited public high school in the State of Montana; and

(c) the Montana Congressional Delegation.

Approved March 26, 1985.

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ENACT LEGISLATION THAT ESTABLISHES A LONG-TERM FOOD AND FIBER POLICY WITH PRICE, PRODUCTION, AND CONSERVATION GOALS THAT STRENGTHEN FAMILY FARM AGRICULTURE.

WHEREAS, farm legislation presently being considered by the United States Congress may determine the survival of family farm agriculture and the control of food production for decades to come; and

WHEREAS, current federal tax laws encourage speculation in agricultural land and tax sheltering in agriculture, giving off-farm investors a competitive advantage over bona fide owner-operators; and

WHEREAS, low commodity prices, high interest rates, export embargoes, and overproduction have resulted in a severe recession in the farm sector; and

WHEREAS, the current credit crisis further weakens the position of family-owned and operated farms and ranches; and

WHEREAS, family farm operators have been generally recognized as the most efficient producers of food and fiber; and

WHEREAS, the family-based farm system promotes good land stewardship; and

WHEREAS, agriculture is the leading industry in Montana, and Montana should take a leadership role in formulating national agricultural policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress is strongly urged to incorporate the following policies in the national farm bills presently being considered by Congress:

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(1) revision of the federal tax laws to remove the tax advantages enjoyed by off-farm investors;

(2) targeting of federal agricultural credit and pricing policies to family-owned and operated farms and ranches;

(3) the establishment of pricing policies through an increase in nonrecourse loan rates that support a parity formula of at least 90%;

(4) full funding of the Farmers Home Administration to continue its function as a lender of last resort for family-owned and operated farms and ranches;

(5) a unified national program to increase the exporting of agricultural products; and

(6) recognition of the importance of sound soil and water conservation practices.

BE IT FURTHER RESOLVED, that Congress is urged to establish a national, long-term food and fiber policy with specific price, production, and conservation goals designed to strengthen family farm agriculture.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, Montana's United States Senators and Representatives, the United States Secretary of Agriculture, and the United States House Agriculture Committee and Senate Agriculture, Nutrition, and Forestry Committee.

Approved April 8, 1985.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT LIVESTOCK GRAZING FEES CHARGED ON THE CHARLES M. RUSSELL WILDLIFE REFUGE BE MAINTAINED AT THE CURRENT RATE.

WHEREAS, the U.S. Fish and Wildlife Service is proposing to increase grazing fees on the Charles M. Russell Wildlife Refuge from $4.61 to $5.61 per animal unit month (AUM) in 1985 and $8.75 per AUM by 1987; and

WHEREAS, in 1980, the grazing fee on both land administered by the Bureau of Land Management and on the Charles M. Russell Wildlife Refuge was $2.36 per AUM; and

WHEREAS, the grazing fee on land administered by the Bureau of Land Management has since decreased to $1.35 per AUM, based on a formula that includes the cost of production, market price of beef, and a forage value index; and

WHEREAS, the grazing fee on state lands is $2.74 per AUM, based on a formula that includes the market price of beef; and

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WHEREAS, in addition to the general plight of agriculture resulting from low commodity prices, high production costs, and an agricultural credit crisis, the Charles M. Russell Wildlife Refuge area is in the midst of one of the most severe droughts in the history of the area; and

WHEREAS, maintaining the present grazing fee is one small, relatively painless step the federal government can take to ease the current plight of the livestock industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the U.S. Fish and Wildlife Service is requested to maintain the current rate of grazing fees charged on the Charles M. Russell Wildlife Refuge.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the manager of the Charles M. Russell Wildlife Refuge, the Secretary of the Interior, and each member of Montana's Congressional Delegation.

Approved March 29, 1985.

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CAPITAL FINANCE ADVISORY COUNCIL TO STUDY A VARIETY OF DEBT-RELATED TOPICS.

WHEREAS, the Montana Legislature has authorized state agencies to incur indebtedness through the issuance of notes, bonds, and certificates to the public to support a wide variety of activities in furtherance of various public purposes; and

WHEREAS, the Governor created the Capital Finance Advisory Council to advise, gather information, and make recommendations to the Governor and members of the Council on bond programs; and

WHEREAS, it is appropriate for the Council to review and analyze topics of a general nature concerning the administration of Montana's debt.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature urges that the following debt-related projects be considered for study by the Capital Finance Advisory Council:

(a) a review to determine whether centralization of loan program administration resulting from the issuance of bonds would be beneficial to the state;

(b) a review of all bond-related loan application forms and procedures to develop recommendations to reduce confusion that may exist in potential borrowers regarding state programs;

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(c) a review of investor perceptions of state general obligation bonds;

(d) the development of proposed guidelines for analyzing debt levels;

(e) the development of a rating agency presentation to be held in Montana for the New York rating agencies;

(f) a review of the state's bonded debt and its relation to the state's fiscal condition;

(g) a study of the effect of new bond programs on the state's total bond authority, including a review and analysis of all bond-related legislation introduced for legislative consideration;

(h) a review of the desirability of creating a staff function to advise and assist agencies, boards, and authorities in the bond issuance process.

(2) That the Capital Finance Advisory Council is requested to report its recommendations to the Governor and the 50th Legislature.

Approved April 8, 1985.

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN SUPPORT OF THE NATIONAL EFFORT TO ADVANCE THE DEVELOPMENT OF MAGNETOHYDRODYNAMICS TECHNOLOGY TO A COMMERCIALLY VIABLE STAGE.

WHEREAS, Montana possesses one of the largest known recoverable deposits of coal within the United States; and

WHEREAS, the wise, efficient, and environmentally acceptable use of our national coal reserves is within the long-term best interests of Montana and the nation; and

WHEREAS, the use of coal in Montana and the United States will be essential to meet electrical energy needs; and

WHEREAS, it is within the long-term best interests of Montana and the nation to vigorously pursue the development of all highly promising, energy-efficient, and environmentally acceptable coal-fired electric generating technologies; and

WHEREAS, there exists a national effort, led by the federal government and supported by private industry, to provide for the development of a coal-fired electrical generation technology known as magnetohydrodynamics (MHD); and

WHEREAS, MHD is a significant new technology that promises more efficient generation of electricity from coal, substantial benefits to the nation through the conservation of the nation's coal resources, substantial reduction of the adverse environmental impacts associated with the conversion of coal to electricity, and the potential reduction of coal mining and transportation requirements.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That MHD is a technology worthy of further development in order to provide for the conversion of coal to electrical power in the cleanest and most efficient manner possible with minimal water use.

(2) That the 49th Montana Legislative Session strongly urges Congress to continue to support the Department of Energy's research and development effort to advance MHD technology to a commercially viable stage.

(3) That the 49th Montana Legislative Session strongly supports the Federal Emerging Clean Coal Technologies initiative and urges Congress to support the MHD retrofit proposal submitted to the Department of Energy.

(4) That the Secretary of State send copies of this resolution to the President of the United States, the Office of Management and Budget, the Secretary of the Department of Energy, the members of the United States House of Representatives Appropriations and Science and Technology Committees, the members of the United States Senate Appropriations and Energy and Natural Resource Committees, and the Montana Congressional Delegation.

Approved March 30, 1985.

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS OF ALLEVIATING DAMAGE CAUSED BY WILD ANIMALS TO AGRICULTURAL CROPS, LAND, AND FIXTURES THEREON.

WHEREAS, the wild animals of the state are a public resource, held in trust by the state for the benefit and enjoyment of all its citizens; and

WHEREAS, good game management policy requires protecting the wildlife resource as well as mitigating damage caused by wildlife through appropriate and expeditious action of the Department of Fish, Wildlife, and Parks; and

WHEREAS, landowners possess their land with the recognition that wildlife may use the land and that they must tolerate a certain level of use by wildlife; and

WHEREAS, a combination of current game management techniques and policy and several recent mild winters has resulted in an overpopulation of big game animals in many parts of the state, with a consequent increase in damage to agricultural crops and land; and

WHEREAS, several surrounding states and Canadian provinces have instituted programs to compensate landowners for damage caused by wild animals; and

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WHEREAS, the wildlife resource provides a valuable source of revenue for both the State of Montana and local businesses through license sales and increased sales of goods and services to sportsmen; and

WHEREAS, the practice of certain landowners of closing their land to hunting directly affects the occurrence of game damage on adjoining lands.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study and determine:

(1) the types of damage caused by wildlife to agricultural crops, land, and fixtures thereon;

(2) desirable population levels of wild animals to adequately preserve the wildlife resource while at the same time minimizing damage to private property;

(3) needed changes in the wildlife management policies of the state that would alleviate damage to private property caused by overpopulation of wild animals;

(4) whether current game management techniques and capabilities of the Department of Fish, Wildlife, and Parks are adequate to properly assess game populations and habitat in determining hunting quotas and seasons;

(5) methods available to the Department for preventing and mitigating damage, including but not limited to:

(a) methods of dealing with landowners who do not permit hunting and whose neighbors suffer damage resulting from the concentrations of wild animals on such land;

(b) cooperative agreements with neighboring states concerning joint damage control measures;

(c) development of quick-response types of action by the Department to individual complaints;

(d) preventive measures currently available or which could be made available, such as new kinds of fencing or repellants, herding, special hunting seasons, use of blood meal, night hunting or herding, scare techniques, and others;

(6) methods available to landowners of preventing and mitigating damage to their land and information and assistance that may be provided in implementing such methods;

(7) the extent of damage that a landowner should be reasonably required to bear, realizing that excessive and unusual damage will be impossible to prevent in certain individual circumstances;

(8) the feasibility of providing direct compensation to landowners and circumstances when such compensation may be payable;

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(9) other, possibly alternative, compensation programs, such as purchase of conservation or habitat easements from landowners or providing tax or other incentives for maintaining wildlife habitat on private land; and

(10) the costs involved in any coordinated damage control program and how such costs should be allocated between landowners, sportsmen, and the general public.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 1, 1985.

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE SUPREME COURT STUDY THE QUESTION OF USE IN A CRIMINAL PROSECUTION OF OUT-OF-COURT STATEMENTS OF AN ALLEGED VICTIM OF THE OFFENSE OF SEXUAL ABUSE OF CHILDREN.

WHEREAS, nationwide, the incidence of sexual abuse of children has been increasing at an alarming rate; and

WHEREAS, in most cases, the only witnesses to sexual abuse of children are the victims themselves; and

WHEREAS, child victims of sexual abuse very often do not make good witnesses in a criminal prosecution because they may be traumatized by the incident, because they may have forgotten the details of the incident, or because they fear the adults participating in the prosecution; and

WHEREAS, criminal prosecutions against a person accused of sexual abuse of children may be dismissed or may be unsuccessful if the child victim cannot or will not testify; and

WHEREAS, when a suspected case of sexual abuse of children is reported to a law enforcement or social services agency, that agency often obtains a written or videotaped statement from the alleged victim; and

WHEREAS, when a child victim cannot or will not testify, the only evidence against the accused may be the child's statement to a third party; and

WHEREAS, House Bill No. 69 was introduced into the Forty-Ninth Legislature to resolve this problem by permitting under limited circumstances the use, in a criminal prosecution for sexual abuse of children, of out-of-court statements made by the victim; and

WHEREAS, House Bill No. 69 did not gain the approval of the House of Representatives, in part because of a concern that to allow this use of out-of-court statements would violate the accused's right of confrontation

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guaranteed by the sixth amendment to the United States Constitution and by Article II, section 24, of the Montana Constitution; and

WHEREAS, opponents of the bill recognized that the bill was a valid attempt to resolve a difficult social problem; and

WHEREAS, time and study should be spent on an attempt to solve this problem while protecting the rights of all those involved; and

WHEREAS, under Article VII, section 2 of the Montana Constitution, the Montana Supreme Court has the authority to promulgate rules of evidence for use in state courts; and

WHEREAS, the Montana Supreme Court has promulgated rules relating to hearsay, specifically Rules 801 through 806, Montana Rules of Evidence.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature requests the Montana Supreme Court's Commission on Rules of Criminal Procedure to study, with a view toward amending its rules on hearsay, the evidentiary and constitutional problems created by the use in limited circumstances of out-of-court statements against those accused of sexual abuse of children, and that the Commission report the results of its study to the 50th Legislature.

(2) That if the results of the Commission's study of these problems indicate that the present hearsay rules need to be amended to resolve the problems in a manner that is constitutional, the Court be urgently requested to adopt such amendments.

(3) That a copy of this resolution be forwarded by the Secretary of State to the Honorable Jean Turnage, Chief Justice of the Montana Supreme Court for delivery to the Commission on Rules of Criminal Procedure.

Approved April 8, 1985.

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONTINUED FUNDING FOR AMTRAK.

WHEREAS, the National Railroad Passenger Corporation, known as Amtrak, serves the citizens of Montana; and

WHEREAS, Montanans' use of Amtrak has increased continuously since 1971, and in 1984, 121,502 persons used Amtrak to arrive at and depart from points in Montana; and

WHEREAS, Amtrak directly employs nine citizens of Montana who collectively earned $223,000 in 1984, and Amtrak supported the economy of Montana through the purchase of supplies and equipment totaling $893,657 in 1984; and

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WHEREAS, Amtrak has continually improved the quality of its service, its financial position, and the number of passengers carried to the point that it transported 22 million people in 1984 and expects to increase that amount by 2% to 3% in 1985; and

WHEREAS, the budget presented to the Congress of the United States by the President would, if enacted, deprive Amtrak of the federal funding required for its continued existence; and

WHEREAS, the effective elimination of Amtrak would result in serious adverse economic consequences to Montana and its citizens in terms of loss of investment, loss of income to contractors with Amtrak for equipment and supplies, loss of rail passenger service, loss of jobs, and a concomitant strain on the Railroad Retirement System by the loss of many contributors to that system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Amtrak be continued in operation to serve Montana as it has in the past.

(2) That the Congress of the United States be requested to provide sufficient funding through appropriation of the amount of money necessary to keep Amtrak in fiscal year 1986 in at least as sound a position operationally and financially as it has been in fiscal year 1985.

(3) That the Secretary of State transmit a copy of this resolution to each member of the Montana Congressional Delegation and to the Honorable Elizabeth H. Dole, Secretary of Transportation, United States Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

Approved March 26, 1985.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO DETERMINE THE FAIR MARKET VALUE FOR GRAZING FEES ON STATE SCHOOL TRUST LANDS.

WHEREAS, a determination of the rate for grazing on state school trust lands is a complex and controversial issue; and

WHEREAS, the revenue from grazing fees constitutes a significant source for the support of Montana public schools; and

WHEREAS, the Legislature has historically established the formula for grazing fees on school trust lands; and

WHEREAS, the Legislative Auditor has recommended that the Board of Land Commissioners raise the grazing rate; and

WHEREAS, the Montana Constitution mandates fair market value for all assets of state land disposed of in Article X, section 11; and

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WHEREAS, many factors must be discussed and considered in setting a fair market value for the grazing rates on Montana school trust lands.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study and determine what the fair market value is for grazing fees on state school trust lands.

(2) That the committee report its findings and recommendations to the 50th Legislature, together with any legislation to implement its recommendations.

Approved March 30, 1985.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE PROVINCE OF TAIWAN AS A SISTER STATE.

WHEREAS, the people of Taiwan are and have been among the most trusted friends of the people of the United States; and

WHEREAS, the commercial, cultural, and other nongovernmental relations between the American people and Taiwan are now and have always been excellent and mutually beneficial; and

WHEREAS, the people of Montana wish to conduct and carry out numerous economic and cultural programs, transactions, and other relations with the people of Taiwan; and

WHEREAS, Montana products are continually essential for maintaining the trade patterns which are developing between the United States and Taiwan; and

WHEREAS, the Legislature has strong reason to believe that it is the will and pleasure of the people of this state that Taiwan be adopted as a sister state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Province of Taiwan is adopted as a sister state.

(2) That the Secretary of State shall send a copy of this resolution to the Governor and to the Speaker of the Provincial Assembly of the Province of Taiwan, to the President of the United States, to the Speaker of the House of Representatives of the United States, and to the President of the Senate of the United States.

Approved April 23, 1985.

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HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE FINANCE COMMITTEE TO STUDY AND REPORT ITS FINDINGS ON THE USE OF VACANCY SAVINGS IN THE BUDGETING PROCESS.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee:

(1) study the use of vacancy savings in setting funding levels for government agencies;

(2) identify the advantages and disadvantages of using vacancy savings in the budgeting process; and

(3) report its findings and recommendations to the 50th Legislature.

Approved April 24, 1985.

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF JUVENILE DETENTION FACILITIES IN MONTANA; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, placing juveniles in detention facilities in proximity to adult offenders creates the possibility of harm to the juveniles; and

WHEREAS, federal court decisions require that juveniles in detention be separated from adult offenders; and

WHEREAS, since the federal court decisions, juveniles detained with adult offenders in other states have initiated costly civil suits against state and local law enforcement and detention facilities; and

WHEREAS, federal law mandates separate detention facilities for juvenile and adult offenders by 1987; and

WHEREAS, currently no county or municipality in Montana has a detention facility for juveniles that would meet federal requirements; and

WHEREAS, no state agency is authorized to manage a juvenile justice system and a juvenile detention and placement system in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That an appropriate interim committee be assigned to study the juvenile detention and placement system in Montana and how it might be improved to meet federal mandates.

(2) That the committee collect data on juvenile detention population and characteristics, detention financing and operational costs, service areas, detention facility conditions, and other matters related to the detention of juveniles.

(3) That the committee consider and, as necessary, develop legislative proposals for developing alternatives to detention, a juvenile pretrial release system, and a state subsidy program for local communities to support alternative programs.

(4) That the committee request assistance from and consider recommendations of state and local agencies responsible for various aspects of juvenile justice and detention and from youth advocacy groups and organizations, including but not limited to Youth Court Judges, probation officers, county commissioners, the Juvenile Justice Bureau of the Board of Crime Control, the Department of Institutions, the Department of Social and Rehabilitation Services, and nonprofit diversion programs serving predelinquent juveniles.

(5) That the committee report the findings and recommendations of the study to the 50th Legislature and, if necessary, draft legislation to implement the recommendations.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE LAWS RELATING TO THE COLLECTION AND DISPOSITION OF FINES, FORFEITURES, COSTS, AND FEES IN CIVIL PENALTY AND CRIMINAL PROCEEDINGS.

WHEREAS, the law relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings is complex, in many instances unclear or contradictory, and dispersed throughout the Montana Code Annotated; and

WHEREAS, the authority to impose, collect, and dispose of fines, forfeitures, costs, and fees resides in numerous types of courts and government agencies; and

WHEREAS, the disposition and use of fines, forfeitures, costs, and fees varies widely according to, among other things, the political subdivision in which the offense occurs, the type of offense, the type of law enforcement officer who arrests the person, the court or agency imposing the fine, forfeiture, cost, or fee, and whether the offender is an adult or a juvenile; and

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WHEREAS, there is no coherent, coordinated, overall plan for the disposition and use of fines, forfeitures, costs, and fees.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the laws relating to the structure, imposition, collection, disposition, and use of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings.

(2) That the study should include at least the following:

(a) an identification of every provision of the Montana Code Annotated that provides for fines, forfeitures, costs, or fees in either a civil penalty or criminal proceeding;

(b) an identification and analysis of the various methods used to determine the ultimate disposition of the money;

(c) an analysis of the costs and administrative problems involved in handling the money and remitting it to the proper agencies;

(d) an analysis of the policy decisions made when the statutes allocating the money were adopted;

(e) the problems involved in not disposing of the money pursuant to an overall plan encompassing all provisions relating to its disposal; and

(f) an unbiased set of alternative solutions to the present complex and unintegrated system for the disposition of the money.

(3) That the committee submit a report of its findings, alternative solutions, and any recommendations it wishes to make to the 50th Legislature.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF JUDICIAL SELECTION METHODS AND COMPENSATION; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, a competent, independent, and impartial judiciary is essential to our form of government in Montana; and

WHEREAS, judicial selection methods and compensation levels are major factors in attracting competent persons to the bench and in maintaining their independence and impartiality while in office; and

WHEREAS, popular election of judges has been the basis of judicial selection in Montana since statehood; and

WHEREAS, the Montana Legislature sets the salaries for Supreme Court Justices and District Judges and establishes the minimum salary

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requirements for Justices of the Peace, while the salaries of judges serving the courts of limited jurisdiction are set by local governing bodies, except for the Small Claims Court Judges, whose salaries are set by the District Judges; and

WHEREAS, public policy questions have been raised concerning the independence and impartiality of an elected judiciary and the adequacy of judicial salaries; and

WHEREAS, the matter of judicial selection has not been subject to a comprehensive examination since the 1972 Montana Constitutional Convention; and

WHEREAS, organizations such as the State Bar of Montana have expressed support for a legislative study on judicial selection and compensation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study:

(a) the current method used in Montana for selecting judges, including a consideration of the appropriateness of this selection method and an examination of alternative selection methods; and

(b) the current compensation levels for Montana judges, including a consideration of the appropriateness of these compensation levels and a review of past salary increases.

(2) That the committee solicit input from the State Bar of Montana and other interested persons and organizations.

(3) That the committee report its findings and recommendations to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE METHODS BY WHICH AN UNEMPLOYED INDIVIDUAL AND HIS DEPENDENTS MAY BE PROVIDED WITH COVERAGE FOR MEDICAL COSTS INCURRED DURING THE WAGE EARNER'S UNEMPLOYMENT; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, most people receive health insurance coverage through their employment because group rates and employer contributions make such insurance affordable; and

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WHEREAS, when a person becomes unemployed, the cost of health insurance greatly increases in price while the income for family needs greatly decreases; and

WHEREAS, one cannot postpone illness or injury merely because of lack of insurance or money to pay hospital bills; and

WHEREAS, the cost of unavoidable major medical treatment may run into tens of thousands of dollars often causing personal bankruptcy and subsequent hardships for the family involved; and

WHEREAS, since the cost of such bankruptcies must be paid by some segment of society, the costs are passed along as higher medical bills, and this burden rests on those receiving medical care—the segment of society least likely to have the resources to bear such a burden; and

WHEREAS, projections of numbers of persons unemployed in Montana during the next biennium suggest that between 8,500 and 12,000 persons a month will be receiving unemployment compensation benefits; and

WHEREAS, if there were a method in Montana for paying or reimbursing some costs of medical care for the unemployed and their families, unnecessary suffering would be avoided because essential treatment for illness or injury that is considered too expensive without insurance would be received; payments made under a health care plan, by the plan and the individual each paying a share, would replace bankruptcy as a method of health care financing; and persons unable to work because of illness or injury would become employable more quickly.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study ways in which unemployed persons may be covered for medical costs incurred while unemployed. The study should consider:

(1) various alternatives to conventional health insurance;

(2) the relationship between coverage while employed and use of that coverage through conversion or continuation while unemployed;

(3) how many persons could be expected to elect to receive coverage if payments for coverage were deducted from unemployment insurance benefits and how such an election affects the group of the unemployed as a whole;

(4) whether health coverage should be administered directly by a state department, by a contract with private insurers, or a combination of both;

(5) sources of funding, including withholding of contributions from unemployment insurance benefits as authorized by federal law; and

(6) specifics for whatever plan is chosen, such as deductibles, payments, eligibility criteria, length and scope of coverage, treatment covered, coordination with similar coverage, and other matters that would affect the cost and effectiveness of the program.

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BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 19, 1985.

HOUSE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE ISSUES RELATED TO THE APPROPRIATE PLACEMENT OF THE LAW ENFORCEMENT ACADEMY AND THE RELATED COSTS.

WHEREAS, the Attorney General has identified a need to provide improved facilities for the Montana Law Enforcement Academy; and

WHEREAS, persons from several communities around the state have expressed interest in having the Law Enforcement Academy moved to their area; and

WHEREAS, in several instances communities have shown that there are buildings and other facilities and services available at what seems to be a reasonable cost, making the possibility of moving the Academy seem attractive; and

WHEREAS, the Legislature has not had available to it a comprehensive analysis of the alternative sites to provide a comparison of all the facilities and services needed by the Academy and the relative costs of providing for those needs and services at the alternative locations proposed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the issues associated with the location of the Montana Law Enforcement Academy.

(2) That the study include at least the following:

(a) an assessment of the facility and service needs of the Academy; and

(b) an assessment of all costs of alternate sites, including the costs of the required physical facilities and the required academic services.

(3) That the committee report its findings to the 50th Legislature.

Approved April 23, 1985.

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HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE BONNEVILLE POWER ADMINISTRATION TO ESTABLISH FAIR, JUST, AND REASONABLE POWER RATES FOR THE NORTHWEST ALUMINUM INDUSTRY TO ALLOW THE INDUSTRY TO MEET COMPETITION IN THE WORLD MARKET.

WHEREAS, the continued viability of the Northwest aluminum industry is essential to the economic stability of Montana and the region; and

WHEREAS, in 1983 the Northwest aluminum industry provided 10,500 jobs, paid $28,000,000 in state and local taxes, provided $450,000,000 in revenues to the Bonneville Power Administration (BPA), and spent $409,000,000 for freight and material purchases; and

WHEREAS, the Columbia Falls smelter directly employs 1,000 persons and provides an annual payroll of approximately $30,000,000; purchases almost $7,000,000 worth of supplies and services from local vendors; pays $2,650,000 in taxes to Flathead County, which is 11% of the total county taxes; and makes other substantial contributions to the economies of Montana and the region generally; and

WHEREAS, the aluminum industry is paying 800% more for electricity than it did 7 years ago; and

WHEREAS, the aluminum industry is in serious economic difficulty because of competition from foreign aluminum manufacturers and domestic aluminum producers who pay significantly lower power rates than those paid by Northwest smelters; and

WHEREAS, power rates charged to Northwest aluminum producers are 50% higher than other free-world aluminum smelter prices for power; and

WHEREAS, over the past few years, the price of aluminum has fluctuated and declined; and

WHEREAS, in 1983 the aluminum industry paid 35.5% of the BPA's revenues but received only 29.5% of the power provided by the BPA; and

WHEREAS, without the aluminum industry's contribution to the BPA revenue requirement, power rates for all other customers would increase substantially; and

WHEREAS, loss of the region's aluminum producers would devastate the economies of Montana and of the Pacific Northwest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Bonneville Power Administration establish fair, just, and reasonable rates for Northwest aluminum producers to allow the Northwest aluminum industry to compete effectively in the world aluminum market.

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BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Administrator of the Bonneville Power Administration, to the Governors of the States of Montana, Idaho, Washington, and Oregon, and to the Congressional Delegation of the State of Montana.

Approved April 19, 1985.

HOUSE JOINT RESOLUTION NO. 52

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF STATE GOVERNANCE AND FINANCING OF MONTANA'S POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS.

WHEREAS, the five postsecondary vocational-technical centers are recognized as vital components of the Montana education system; and

WHEREAS, the governance of the centers is currently fragmented among the office of the Superintendent of Public Instruction, the Legislature, and local high school boards of trustees; and

WHEREAS, financing for the centers is in increasing jeopardy because federal funding is diminishing, because the Legislature is reluctant to increase funding when there is no unified method of accountability, and because the local school boards are having difficulty promoting local property tax funding for both the centers and for elementary and secondary education; and

WHEREAS, a statewide system of governance and funding has the potential for creating a more efficient postsecondary vocational-technical education system for addressing the funding crisis and meeting the demand for well-trained workers who can contribute to Montana's economic development; and

WHEREAS, prior to and during the 1985 regular legislative session, the many interested parties spent significant time and effort developing and considering options for state governance and funding for the postsecondary vocational-technical centers, but the Legislature could not achieve a consensus on this complex issue.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) various governance structures for vocational-technical education;

(2) the funding needs and sources for postsecondary vocational-technical centers;

(3) curriculum evaluation to meet changing educational needs; and

(4) concerns arising from state governance, such as employee rights, state assumption of facilities, and program coordination and development.

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BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF JOB TRAINING AND PLACEMENT PROGRAMS TO ATTEMPT TO COORDINATE EFFORTS TO PROVIDE MAXIMUM BENEFIT FOR UNEMPLOYED MONTANANS.

WHEREAS, some major employers in communities throughout Montana have ceased operations, thus leaving citizens without jobs; and

WHEREAS, long-term unemployment plagues many Montana citizens and a 7% to 8% unemployment rate has become commonplace; and

WHEREAS, many of the unemployed have had to use the state general assistance programs, thus increasing caseloads and creating a crisis in funding for the Department of Social and Rehabilitation Services; and

WHEREAS, as the average age of Montana citizens increases, unemployment becomes a greater problem because it is especially difficult for older persons to find employment; and

WHEREAS, federal assistance is decreasing for job training and employment programs that help Montanans develop necessary skills to secure employment; and

WHEREAS, the Build Montana program in the Department of Commerce has the mandate to promote economic development in this state, but has not to date impacted the basic unemployment problem; and

WHEREAS, several state agencies, such as the Department of State Lands, the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, and the Department of Highways have projects that could provide job training and jobs for participants while successfully completing the agencies' projects; and

WHEREAS, many state agencies have programs to assist the unemployed, and there is an increased need for coordination of efforts because of steadily decreasing resources; and

WHEREAS, the problem of skyrocketing costs of state public assistance is, to a great extent, a problem of lack of jobs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim study committee be assigned to:

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(1) examine how the Department of Commerce, through its Build Montana program, can develop economic growth in such a manner as to directly create jobs for the long-term unemployed in Montana;

(2) examine how the Department of Labor can target public assistance recipients, and those not eligible for public assistance because of nonincome restrictions, for job training through the Job Training Partnership Act (JTPA), the Work Incentive program (WIN), programs for displaced homemakers and dislocated workers, and other available sources;

(3) examine how the current general assistance workfare programs administered by the Department of Social and Rehabilitation Services and local governments can be used as an avenue toward permanent jobs in the private or public sector;

(4) examine how various state and local government projects could be employment sources for those Montanans who might otherwise receive public assistance and job training;

(5) receive testimony and information from pertinent state agencies, local government agencies, community human services groups, low-income groups, business and taxpayer groups, and all other interested parties; and

(6) develop a coordinated plan to streamline and increase the effectiveness of Montana programs for all unemployed persons.

BE IT FURTHER RESOLVED, that the committee report the findings and recommendations of the study to the 50th Legislature and, if necessary, draft legislation to implement the recommendations.

Approved April 22, 1985.

HOUSE JOINT RESOLUTION NO. 55

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF GOVERNMENT'S IMMUNITY FROM SUIT AND LIMITS OF LIABILITY FOR THE STATE OF MONTANA AND ITS POLITICAL SUBDIVISIONS; REQUIRING A REPORT OF THE FINDINGS TO THE LEGISLATURE.

WHEREAS, Article II, section 18, of the Montana Constitution authorizes the reinstatement of immunity from suit in specified instances by a two-thirds vote of each house of the Legislature; and

WHEREAS, the Legislature passed Chapter 189, Laws of 1977, creating limits of liability for state and local governments of $300,000 per claimant and $1,000,000 per occurrence and banning recovery of noneconomic damages against such entities; and

WHEREAS, the ban on recovery of noneconomic damages was declared unconstitutional by the Montana Supreme Court in Karla White v. State of Montana, and the dollar limitations referenced above were also invalidated as nonseverable; and

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WHEREAS, the 48th Legislature reenacted the $300,000 per claimant, $1,000,000 per occurrence limitations in Chapter 675, Laws of 1983, and further affirmed the findings of the report of the subcommittee on judiciary contained in the interim study of limitations on the waiver of sovereign immunity issued in December 1976; and

WHEREAS, the expansion of common law theories of recovery against the state, together with increasing payments to injured claimants, has caused considerable public interest in governmental liability limits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the adequacy of the existing $300,000 per claimant, $1,000,000 per occurrence limits of liability for the state and its political subdivisions;

(2) alternative immunities that might be enacted for specific high-risk activities;

(3) the available means and costs of payment of liability claims, including but not limited to insurance, self-insurance, excess umbrella insurance coverage, risk pooling, and legislative appropriations.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES TO APPOINT A WELL-QUALIFIED MONTANAN TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

WHEREAS, the United States Court of Appeals for the Ninth Circuit has appellate jurisdiction of the United States District Courts of the States of California, Washington, Oregon, Arizona, Nevada, Idaho, Alaska, Hawaii, and Montana; and

WHEREAS, prior to July 1984, there were 23 judges on the Ninth Circuit Court of Appeals; and

WHEREAS, none of the judges presently serving on the Ninth Circuit Court of Appeals are citizens of the State of Montana; and

WHEREAS, one or more citizens of each of the other eight states in the Ninth Circuit serve as judges on the Ninth Circuit Court of Appeals; and

WHEREAS, on July 10, 1984, the United States Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law

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98-353), which authorized the President of the United States, by and with the advice and consent of the United States Senate, to appoint five additional judges for the Ninth Circuit Court of Appeals; and

WHEREAS, appointments to two of the five new positions have been made by the President and confirmed by the United States Senate; and

WHEREAS, the President must make three more appointments to the Ninth Circuit Court of Appeals in the near future; and

WHEREAS, it is in the interest of Montanans that a well-qualified resident of Montana be appointed to one of these positions; and

WHEREAS, there are numerous Montanans who are well qualified to assume such a position.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the United States is urged to appoint a well-qualified resident of the State of Montana to a judicial position on the Ninth Circuit Court of Appeals.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States and to each member of the Montana Congressional Delegation.

Approved April 23, 1985.

HOUSE JOINT RESOLUTION NO. 57

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PROBLEMS FACING THE AGRICULTURAL SECTOR OF THE MONTANA ECONOMY.

WHEREAS, Montana's family farm and ranch operators are being squeezed between low commodity prices and high operating and overhead costs that threaten to erase many such agricultural units from the productive framework; and

WHEREAS, the health of main street businesses in most communities of the state reflects the economic condition of agriculture; and

WHEREAS, the stability of many Montana financial institutions depends upon the ability of farmers and ranchers to fulfill their obligations promptly and upon maintenance of values of farm and ranch land; and

WHEREAS, state and local governments rely upon a continuing flow of tax revenue generated by or related to agriculture; and

WHEREAS, information on the farm credit system and on agricultural marketing problems including exports, embargo protection, meat imports, foreign aid food programs, subsidized food export programs, and supply

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management programs is required for the development of effective legislation; and

WHEREAS, legislation to provide a long-term solution to the problems of agriculture requires bipartisan support for a continuing program to assure equitable commodity prices that will allow farmers and ranchers to realize profits on their products and such legislation must include workable provisions capable of withstanding changes in administrations and capable of adjusting with domestic and international economic fluctuations; and

WHEREAS, assessment of the impact of factors such as federal deficits and high interest rates is necessary to an understanding of the plight of agriculture; and

WHEREAS, certain members of the 49th Legislature, recognizing the effect of these and other factors upon the viability of Montana's farm and ranch economy, participated in the deliberations of the Cooperative Agricultural Revitalization Effort, otherwise known as the CARE Forum, to assess the extent of the state's agricultural problems and to search for remedies to the impending crisis situation; and

WHEREAS, the CARE Forum lacked the time and resources to complete its agenda and the Legislature recognizes the need for continuation of an effort such as the CARE Forum.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned:

(1) to study the problems and prospects facing Montana's farmers and ranchers; and

(2) to recommend a course of action or programs to assist and to promote Montana agriculture.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 25, 1985.

HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE STATUTORY EMPLOYMENT AT WILL RULE AND THE DOCTRINES OF WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

WHEREAS, section 39-2-503, MCA, provides that "an employment having no specified term may be terminated at the will of either party"; and

WHEREAS, this rule was strictly applied in Montana until 1980; and

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WHEREAS, since 1980, the Montana Supreme Court has applied two exceptions to the "employment at will rule", which are known as "the doctrine of wrongful discharge in violation of public policy" and "the implied covenant of good faith and fair dealing"; and

WHEREAS, since the mid-1970s, these exceptions have become increasingly popular in many states as limits upon the 100-year old "employment at will rule" applied nationwide; and

WHEREAS, the application of these exceptions has a far-reaching effect on the employment relationship and the parties to that relationship are unsure of the scope of the exceptions and the manner of their application; and

WHEREAS, it is essential that these parties know exactly how they stand in relation to each other.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study:

(a) the "employment at will rule";

(b) the doctrine of wrongful discharge in violation of public policy; and

(c) the doctrine of an implied covenant of good faith and fair dealing as an exception to the "employment at will rule".

(2) That the committee study the case law of Montana and cases and statutes of other states relevant to these three doctrines.

(3) That the committee describe various applications of these three doctrines and reactions to them in the other states.

(4) That the committee study the reasons underlying the three doctrines.

(5) That the committee prepare an all-encompassing report on the matter, including alternative approaches and methods for arbitrating discipline and discharge disputes, the desirability of requiring arbitration as a precondition to filing suit, and submit the report and its recommendations to the 50th Legislature.

Approved Apr.l 25, 1985.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

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CHAPTER 1
Presiding Officer — Decorum, Order, and Debate

S1-1. The senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president, but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 (second reading of bills), in addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio, and television, and former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4
Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report or a report without recommendation has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

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CHAPTER 5
Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 7
Committees

S7-1. The senate shall elect a committee on committees consisting of 5 members, except when the senate is evenly divided between parties, when the committee on committees shall consist of 6 members, 3 from each party. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees, with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education and Cultural Resources
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

S7-2. The majority floor leader shall be an ex officio member of all committees in order to establish a quorum.

S7-3. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, select committees,

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and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

S7-4. Pairs in standing committee and committee of the whole are prohibited. Standing and select committees may by a majority vote of the committee authorize members to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S7-5. There is a select committee on long-range building. The select committee shall meet jointly with the Long-Range Building Subcommittee of the House Committee on Appropriations to make recommendations on issues assigned to the joint subcommittee. The select committee shall consider and make recommendations to the Committee on Finance and Claims concerning issues assigned to it by the President. Select committee members may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

CHAPTER 8
Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may be amended or adopted only with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10
Nominations from the Governor

S10-1. The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 18, 1985.

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SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA EXPRESSING ITS DESIRE TO MOVE ITS CHAMBER.

WHEREAS, the Legislature in 1981 appropriated $6,750,000 to renovate the State Capitol in concert with the long-range plan for the Capitol complex, published in 1972; and

WHEREAS, the question of whether the Senate should move has been an issue in the long-range plan and the current renovation project; and

WHEREAS, the Senate of Montana is the final authority to determine where it will sit; and

WHEREAS, phase I of the Capitol renovation project is nearly complete; and

WHEREAS, phase II is ready to go to bid; and

WHEREAS, recent events suggest great efficiencies could accrue to the operation of the Senate were its chamber to be moved to the east wing as contemplated in the long-range plan; and

WHEREAS, the current Senate must give notice to all concerned as to its desire to move its chamber or to remain in its present chamber; and

WHEREAS, section 2-17-109(4), MCA, requires that the present Senate chamber be preserved as a single, undivided room to be used for legislative purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the Senate express its desire to move its chamber to the area in the east wing of the Capitol formerly occupied by the State Law Library.

(2) That it be the intention of the Senate that if the move is made as proposed, the third and fourth floors of the Capitol would be assigned to the Legislature, with the House of Representatives controlling the space west of the rotunda and the Senate controlling the space east of the rotunda.

(3) That this resolution constitute a determination by the Senate that the location of the Senate chamber is to be moved.

Approved February 9, 1985.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA INDICATING THE DESIRE OF THE SENATE TO RETAIN THE OLD SUPREME COURT CHAMBER AS A SENATE HEARING ROOM.

WHEREAS, since the Montana Supreme Court moved from the Capitol, its old chamber has served admirably as a Senate hearing room; and

WHEREAS, the unrest resulting from the uncertain future of Capitol renovation may leave the question of committee room assignment open as between the House and the Senate; and

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WHEREAS, Senate leadership needs a sense of the Senate with regard to the use of the old Supreme Court chamber.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate desires to retain the old Supreme Court chamber as a Senate hearing room.

Approved April 25, 1985.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES IN ADDITION TO THE JOINT RULES TO GOVERN ITS PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules are adopted:

CHAPTER 1
Presiding Officer — Decorum, Order, and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore, who shall perform all of the duties of the speaker in the absence of that officer and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than 30 minutes in debate on any one motion or question; however, in committee of the whole, no member may speak over 5 minutes on any motion except the member who made the motion on the immediately pending question, and that member shall have 5 minutes to close.

H1-4. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the immediately pending question, in which case he may speak in reply after all members choosing to speak have spoken.

H1-5. If the motions "do pass" and "do not pass" or "indefinitely postpone" both fail on Second Reading, a motion to reconsider is in order in Committee of the Whole.

H1-6. Subject to Joint Rules 1-2 and 1-3, the following persons may be admitted to the floor of the house during sessions: legislators; legislative officers and employees whose presence is necessary for the conduct of the business of the session; legislative aides and interns; accredited members of the press, radio, and television; former legislators; members' spouses and their children; and guests of legislators.

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CHAPTER 2
Meetings, Quorums, and Attendance

H2-1. Lobbying on the floor of the House of Representatives is prohibited during the session and within 2 hours prior to the commencement of a session and within one-half hour after recess or adjournment.

CHAPTER 3
Committees

H3-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Labor
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Human Services and Aging
8. Judiciary
9. Legislative Administration/Bills and Journal
10. Local Government
11. Natural Resources
12. Rules
13. State Administration
14. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

H3-2. The committee on rules shall consist of the speaker, the republican house leader, the democratic floor leader and other members of the democratic party appointed by the speaker, the republican floor leader, and other members of the republican party appointed by the republican house leader. The speaker shall appoint the democratic members of and the republican house leader shall appoint the republican members of other standing committees, select committees, and house membership on joint committees and conference committees. Each leader shall make his appointments after good faith consultation with his counterpart.

H3-3. The speaker, republican house leader, democratic floor leader, and republican floor leader shall be ex officio members on all committees.

H3-4. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading unless they are referred to a committee by motion duly made on order of business No. 6.

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If the committee report is that the bill "Do Not Pass", the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If 20 members, including at least one-third of the appointed members of the committee making the report, so indicate, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on on order of business No. 2.

A tie vote in a standing or select committee on a question of whether a bill 'do pass' or 'do not pass' or 'be concurred in' or 'be not concurred in' shall result in the committee reporting the bill to the house without recommendation. All bills reported without recommendation shall be placed on Second Reading unless they are referred to a committee by motion duly made on order of business No. 6.

Whenever there is a tie vote of the house members of a conference committee to approve the conference committee report, the report shall be submitted to the house for consideration without recommendation.

CHAPTER 4
Rules

H4-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules, which shall report no later than the next legislative day. Unless recommended by the committee on rules, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by a two-thirds vote.

H4-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 8, 1985.

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AMEND THE HOUSE RULES FOLLOWING H3-4 BY ADDING HOUSE RULE H3-5 TO PROVIDE FOR A REVENUE SUBCOMMITTEE OF THE HOUSE TAXATION COMMITTEE.

WHEREAS, Article VIII, section 9, of the Montana Constitution requires a balanced budget with appropriations not exceeding anticipated revenue; and

WHEREAS, during the 49th Legislative Session, the Taxation Committee of the House of Representatives has created a revenue subcommittee to advise the House of Representatives as to anticipated revenue for the next biennium; and

WHEREAS, the revenue subcommittee of the House Taxation Committee has held extensive hearings on estimated revenue to the State of Montana for the next biennium; and

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WHEREAS, the revenue estimates prepared by the revenue subcommittee provide a basis upon which a balanced budget may be prepared; and

WHEREAS, such revenue estimates are a valuable aid to the Legislature as a whole and to the House of Representatives in particular; and

WHEREAS, the establishment of a permanent revenue subcommittee of the House Taxation Committee to prepare revenue estimates for the State of Montana would be of continuing benefit to the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House Rules are amended following H3-4 by adding H3-5 which provides:

"H3-5. By the first legislative day there shall be appointed a revenue subcommittee of the Taxation Committee made up of members of the Taxation Committee. The subcommittee shall be appointed in the same manner as members of standing committees as provided in H3-2. The first named member of the subcommittee is the chairman and in his absence the next named member, and so on. The revenue subcommittee shall review state revenue and recommend estimated revenue levels for the next biennium to the Taxation Committee by the 18th legislative day."

Approved February 19, 1985.

HOUSE RESOLUTION NO. 4

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUIRING ALL HOUSE SUPPLIES TO BE STORED UNDER LOCK AND KEY AND ALL FURNITURE BELONGING TO THE HOUSE TO BE LABELED AND NOT MOVED DURING THE INTERIM.

WHEREAS, much difficulty has been experienced in locating stored supplies and furniture belonging to the House; and

WHEREAS, some articles of furniture have not yet been located, and the use of House furniture by other state departments during the interim has caused confusion and some damage.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all small supplies and typewriters belonging to the House of Representatives of the State of Montana be boxed, labeled, and stored under lock and key in the Capitol.

BE IT FURTHER RESOLVED, that the Sergeant-at-Arms of the House shall inventory all of the items of furniture in each individual office and committee room of the House and that all furniture belonging to the House remain in the particular offices and committee rooms of the House and

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may not be removed from the various offices and committee rooms of the House during the interim, except for special sessions; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be delivered to the Director of the Department of Administration, as a formal request of the House.

Approved April 24, 1985.

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APPENDICES

1 Ballot Issues

(a) Constitutional Amendment 13

(b) Constitutional Amendment 14

(c) Initiative 97

2 Special Session 48th Legislature
December 12, 1983 — December 17, 1983

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BALLOT ISSUES

CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENT NO. 13

By Chapter 85, Laws of 1983, the Legislature proposed an amendment to the Constitution of the State of Montana to allow the Montana Supreme Court to discipline any justice or judge for a violation of the cannons of judicial ethics.

Chapter 85 was approved by the following vote at the General Election held November 6, 1984:

For:	287,926
Against:	68,251

The title and text of Chapter 85 follow.

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW THE MONTANA SUPREME COURT TO DISCIPLINE A JUSTICE OR JUDGE FOR VIOLATION OF CANONS OF JUDICIAL ETHICS ADOPTED BY THE COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 11, of the Constitution of the State of Montana is amended to read:

"Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, *violation of canons of judicial ethics adopted by the supreme court of the state of Montana,* or habitual intemperance.

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(4) The proceedings of the commission are confidential except as provided by statute."

Section 2. **Effective date.** If approved by the electors at the general election to be held November 8, 1983, this amendment shall become effective on that date.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 8, 1983, by printing on the ballot the full title of this act and the following:

☐ FOR amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.

☐ AGAINST amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.

Section 4. **Coordination instruction.** If HB 629, introduced in the 48th legislature, is passed and approved, the date "November 8, 1983" in sections 2 and 3 of this act is changed to "November 6, 1984".

CONSTITUTIONAL AMENDMENT NO. 14

By Chapter 421, Laws of 1983, the Legislature proposed an amendment to the Constitution of the State of Montana providing that congressional districts be redistricted within 90 days after the official decennial census figures become available.

Chapter 421 was approved by the following vote at the General Election held November 6, 1984:

For:	214,956
Against:	109,813

The title and text of Chapter 421 follow.

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE CONGRESSIONAL DISTRICTS IN MONTANA BE REDISTRICTED WITHIN 90 DAYS AFTER THE OFFICIAL FINAL DECENNIAL CENSUS FIGURES ARE AVAILABLE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article V, section 14, of the Constitution of the State of Montana is amended to read:

"Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and

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each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts *and a plan for redistricting the state into congressional districts*. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan *for legislative districts* to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan *for legislative districts* with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is dissolved."

Section 2. **Effective date.** If approved by the electorate, this amendment becomes effective October 1, 1985.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 6, 1984, by printing on the ballot the full title of this act and the following:

☐ FOR requiring the congressional redistricting plan to be finalized within 90 days after official final census data are available and eliminating provisions for legislative comment.

☐ AGAINST requiring the congressional redistricting plan to be finalized within 90 days after official final census data are available and eliminating provisions for legislative comment.

Section 4. **Coordination instruction.** If House Bill 629 introduced in the 48th legislature is not passed and approved, the date "November 6, 1984" in section 3 of this act is changed to "November 8, 1983".

INITIATIVE

INITIATIVE NO. 97

By Initiative, the people proposed that the state of Montana would permit the state licensing of denturists to make, fit, repair, and furnish

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dentures to the public. It would set standards for the issuing of licenses to denturists and for the conduct of their practice. It would create a State Board of Denturity to administer examinations to applicants for licenses, and to collect fees for issuing and renewing licenses. The Initiative would exempt licensed denturists from the Dental Practices Act and would amend sections 37-4-103, 37-14-102, and 37-14-301, MCA. The Initiative was approved by the following vote at the General Election held November 6, 1984:

For:	194,285
Against:	171,448

The text of the Initiative law follows:

Be it enacted by the People of the State of Montana:

Section 1. **Short title.** (This act) may be cited as the "Freedom of Choice in Denture services Act of 1984."

Section 2. **Definitions.** As used in (this act), unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of denturitry provided for in (Section 7).

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under (this act) to engage in the practice of denturitry.

(4) "Department" means department of commerce provided for in Title 2, Chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

Section 3. **License to practice required.** (1) After April 1, 1985, a person must hold a license for the practice of denturitry in order to perform the following acts:

(a) engaging or offering to engage in the practice of denturitry; or

(b) use in connection with his name the word or letters "denturist," "L.D.," or any other words, letters, abbreviations, or insignia implying that such person is engaged in the practice of denturitry.

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(2) The practice of denturitry within the context of (this act) requires that all work except cast frame work be performed at the address shown on the denturist's license.

Section 4. **Exceptions.** The provisions of (this act) do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by (Section 11(2) of this act), provided that no denturist may supervise more than one such person at any one time.

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by (Section 11(2) of this act).

Section 5. **Prohibitions.** No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

Section 6. **Standards of conduct and practice.** Each denturist must comply with the following standards in his practice:

(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit, and cold disinfectant in every office, to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.

(5) Every patient must have a separate and clean bib and a disposable cup.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient.

(8) Every licensed denturist must carry a current cardiopulmonary resuscitation card.

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(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept.

(11) All teeth and materials used shall meet american dental association standards.

(12) All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

Section 7. **Board — membership — vacancies.** (1) There is a Montana state board of denturitry. The board consists of five members to be appointed by the governor within 30 days of adoption of (this act). The board shall be appointed as prescribed in Section 2-15-124, except that a member need not be an attorney. Three members of the board must be denturists who have had, immediately prior to their appointment, at least 5 years' experience in the practice of denturitry. Two members of the board must be lay persons, one member a senior citizen representative and the other member a low income representative.

(2) Members of the board shall hold office for terms of 3 years each.

(3) Each member of the board shall hold office for his term and until his successor is duly appointed by the governor.

(4) The Board is attached to the department for administrative purposes only as provided in 2-15-121.

Section 8. **Officers, meetings, voting, records, fair practice committee.** (1) The board shall elect a president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same person. Officers of the board are elected for terms of 1 year at the annual meeting of the board. The same person may not hold the office of president for more than 3 years in succession.

(2) The board must hold meetings on the second Friday of December and the second Friday of May to conduct business and perform duties. The board may meet at such other times as designated by the president or by request of two or more members of the board. Meetings must be held in the offices of the board. Dates and places may be changed through notification by the board at least 10 days prior to the regular meeting date or the date established for a meeting, whichever is earlier.

(3) A majority of the board constitutes a quorum for all purposes, and the majority vote of the members voting constitutes the action of the board.

(4) The secretary of the board must keep a complete record of all of its proceedings.

(5) The board shall appoint a fair practice committee consisting of three denturists selected from the membership of the association of Montana denturists. This committee may meet as need arises and must file a written report with the board containing its recommendations.

Section 9. **Compensation and expenses of board members of excess funds — expenditure limitations.** (1) Out of the funds derived

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from fees collected under (this act) each member of the board must receive compensation and travel expenses as provided for in 37-1-133, with the exception that denturist members of the board may receive compensation for expenses only.

(2) Money collected in excess of expenses and salaries must be held by the department as a special fund for meeting the expenses of the board, the proper administration of (this act), and educational purposes approved by the board.

(3) The department is not obligated to pay claims which, in aggregate with claims already paid exceed the income to the department which has been derived by the application of (this act).

Section 10. **Board powers and duties.** The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under (this act);

(2) administration of examinations and determination of a passing grade for licensure under (this act);

(3) collection of fees and charges prescribed in (this act); and

(4) issuance, suspension and revocation of licenses for the practice of denturitry under the conditions prescribed in (this act).

Section 11. **Application for license.** Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(a) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(b) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction

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and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed 2 years of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed attesting to 5 years practice under the certificate of license. However, no applicant may be licensed under the provisions of (this subsection) unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those boards in states or territories whose laws are compatible with (this act).

Section 12. **Examinations.** The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of such character as to determine the qualifications, fitness and ability of the applicant to practice denturitry. The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations shall carry equal weight. The oral examination results may adjust an average score only two percentage points.

(3) The written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;

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(j) medical emergencies.

(4) Applicants who fail to score a 75% average on the written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both, provided that all applicants under (section 11(1) of this act) are examined on or before April 1, 1985.

Section 13. **Applications and fees.** The board is entitled to charge and collect the following fees:

(1) $200 application for licensing;

(2) $200 for original license;

(3) $200 annual license renewal fee;

(4) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(5) $50 for a duplicate or replacement license or a license for a second address, provided that no denturist may hold licenses bearing more than two different addresses.

Section 14. **Licensing.** (1) A denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours continuing education, which may include programs sponsored by an educational institution, state denturist board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in (section 12(3) of this act.) Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Licensure applications must be received by the department on or before April 1 preceding the July examination. Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees. Applications received after April 1 will be held over for examination the following year.

Section 15. **Suspension or revocation of license.** (1) The board has the power to refuse to issue a license, to suspend or revoke a license or to place a licensed person on probation for a period specified by the board, or to reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of denturitry;

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(b) incompetence or gross negligence in the practice of denturitry;

(c) fraud or misrepresentation in the practice of denturitry;

(d) the use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry; or

(e) the willful violation of any provision of (this act).

(2) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set for in (section 6 of this act).

(3) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action.

Section 16. **Revocation of license stays eligibility.** A denturist whose license has been revoked either by the Montana board of denturitry or the similar body of another state is not eligible to apply for a license until 1 year after the date of revocation.

Section 17. **Renewal or reinstatement of license.** One year after revocation of a license, the board at its discretion may grant a temporary license under a 1 year probationary period. At the end of the probationary period, the licensee must appear before the board and upon approval by the board and payment of appropriate fee must be fully reinstated. The board shall grant such approval upon being satisfied that the licensee has complied with (this act) during the probationary period and will comply in the future.

Section 18. **Health insurance policies to include denturist services.** Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

Section 19. **Association with Dentists Permitted.** (1) A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

Section 20. **Notice of board address, guarantee.** (1) A notice must be posted in a conspicuous area on any premises where the practice of denturitry is conducted, with lettering of a size easily read by the average person and in substantially the following form:

ANY CONSUMER WHO HAS A COMPLAINT
RELATING TO PRACTICES OF THIS
ESTABLISHMENT MAY CONTACT THE MONTANA
BOARD OF DENTURITRY, DEPARTMEMT OF
COMMERCE, 1424 NINTH AVENUE, HELENA,

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MONTANA 59620.

(2) All denturist services must be unconditionally guaranteed for a period of not less than 90 days.

Section 21. **Violation and penalty.** Violation of any provision of (this act) constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

Section 22. **Judicial review of board action.** A person who is aggrieved by an action of the board, in denying, refusing to renew, suspending or revoking a denturist license may appeal to the district court in the county in which he resides. Such appeal is perfected by filing with the clerk of the court, within 30 days following the action of the board of which complaint is made, a notice of appeal setting forth briefly the action complained of and how the petitioner has been deprived of any legal rights. A copy of the notice of appeal must be served upon the president or secretary of the board, with notice to the attorney general of the state of Montana in the manner of civil appeal, and the court may sustain or reverse the action of the board or direct the board to take further or other action with regard to the appeal.

Section 23. Nominees for appointment to the original board must be examined by qualified examiners from a state that currently authorizes the practice of denturitry. The examinations must be established by the examining team and be the equivalent of examinations administered for licensing of denturists in the states represented by the examiners. The examiners shall establish a passing grade, and satisfactory completion of the original examination will qualify the nominees for licensing in Montana and for service on the Montana board of denturitry. Nominees who do not score a passing grade on the original examination may apply for reexamination to the Montana board of denturitry. Expense of examination for nominees is not the responsibility of the board.

Section 24. Section 37-4-103, MCA, is amended to read:

"37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by

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the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bonafide instructor of a school, college, or department of a university recognized and approved by the board provided such dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by (sections 1 through 22). None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry."

Section 25. Section 37-14-102, MCA, is amended to read:

"37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization to apply x-ray radiation to persons issued by the department of commerce.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, *denturitry,* dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies diagnostic x-ray radiation to persons."

Section 26. Section 37-14-301, MCA, is amended to read:

"37-14-301. Limitation of license authority — exemptions. (1) No person may apply x-ray radiation to a person unless licensed under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or *denturitry.*

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the

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specific direction of a person licensed to prescribe such examinations or treatments.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist or a permitholder under 37-14-306 may not perform any of the activities listed in this subsection."

Section 27. **Initial Board.** Of the initial board, the three members to be appointed from nominations of the association of Montana denturists shall serve for terms of 1 year, 2 years, and 3 years respectively, as designated in their appointment. Of the initial board, the two lay person representatives shall serve terms of 3 and 2 years respectively, as designated in their appointment. Thereafter, members must be appointed to the board for terms of 3 years each, except that appointment to fill vacancies must be for the unexpired term of such vacancy.

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. **Codification instruction.** (1) Sections 1 through 6 and 8 through 22 are codified as an integral part of Title 37.

(2) Section 7 is intended to be codified as an integral part of Title 2, chapter 15.

Section 30. **Effective date.** This act is effective December 1, 1984.

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SESSION LAWS

ENACTED BY THE

Forty-eighth Legislature

IN SPECIAL

SESSION

December 12 through 17, 1983

STATE OF MONTANA

1983

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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SESSION LAWS

CHAPTER NO. 1

AN ACT PROVIDING PREFERENCE IN PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; RECONCILING THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES; AMENDING SECTION 10-2-402, MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA; PROVIDING FOR PARTIAL RETROACTIVE EFFECT OF THE REPEAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Montana Veterans and Handicapped Persons Employment Preference Act".

Section 2. **Purposes.** The purposes of [sections 1 through 10] are to recognize veterans and disabled veterans for service to their country, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of veterans, disabled veterans, and handicapped persons.

Section 3. **Definitions.** For the purposes of [sections 1 through 10], the following definitions apply:

(1) "Active duty" means full-time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service-connected disability determined by the United States veterans administration to be 30% or more disabling.

(3) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability; or

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(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment.

(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(6) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

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(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(7) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a postsecondary vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(8) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(9) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service by honorable discharge.

(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.

(10) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

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(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

(11) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

Section 4. **Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in [section 5] and claims a preference as required by [section 8], a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a disabled veteran or handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in subsection (5)(b) of [section 3] or to any other personnel action that is not an initial hiring.

Section 5. **Eligibility requirements.** No veteran, disabled veteran, eligible spouse, or handicapped person is entitled to receive employment preference as provided in [section 4] unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying.

Section 6. **Certification of handicapped persons.** The department of social and rehabilitation services shall certify persons as handicapped

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for the purpose of employment preference as provided in [sections 1 through 10].

Section 7. **Duration of employment preference.** Subject to [section 5]:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of [section 3], a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of [section 3] qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in [section 3], who is not a disabled veteran, as defined in [section 3], qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following [the effective date of this act], whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of [section 3] qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of [section 3] qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

Section 8. **Enforcement of preference.** (1) A public employer shall, by posting or on the application form, give notice of the preferences that [sections 1 through 10] provide in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under subsection (4).

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

(4) (a) An applicant who believes he has not been accorded his rights under [sections 1 through 10] may, within 30 days of receipt of the notice of the hiring decision, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(b) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts which on their face entitle the applicant to an employment preference.

(c) (i) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public

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employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to subsection (8) of [section 3] and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(ii) The time to appear provided in subsection (4)(c)(i) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (4)(c)(i), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(iii) If the public employer does not carry its burden of proof under subsection (4)(c)(i) and the court has found that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of [sections 1 through 10], and a court may not grant any other relief in an action for violation of [sections 1 through 10].

(d) Failure of an applicant to file a petition under subsection (4)(b) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (4)(a) within 15 days and a petition is filed under subsection (4)(b), the court shall order the public employer to reopen the selection process.

(e) The Montana Rules of Civil Procedure apply to a proceeding under this subsection (4) to the extent that they do not conflict with this subsection (4).

Section 9. **Adoption of rules.** The department of administration shall adopt rules implementing [sections 1 through 10] and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of [sections 1 through 10]. The department of administration's rules apply to all public employers, local as well as state.

Section 10. **Conflicts with federal law.** [Sections 1 through 10] do not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

Section 11. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veteran's preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall *apply the preference granted to veterans and disabled veterans, but not the preference granted to other persons, by [sections 1 through 10].*"

Section 12. The application of an employment preference as provided for in [sections 1 through 10] and 10-2-402 by a public employer as defined in [section 3] may not be construed to constitute a violation of this chapter.

Section 13. The application of an employment preference as provided for in [sections 1 through 10] and 10-2-402 by a public employer as

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defined in [section 3] may not be construed to constitute a violation of this chapter.

Section 14. **Repealer.** Sections 10-2-201 through 10-2-206, MCA, are repealed. This repeal applies retroactively to bar any claim of violation or application of 10-2-201 through 10-2-206 that has not been reduced to judgment, whether or not the judgment is final, on [the effective date of this act]. Claims under 10-2-201 through 10-2-206 that have been reduced to judgment, whether or not the judgment is final, on [the effective date of this act] are enforceable. No claim for a violation of 10-2-201 through 10-2-206 may be made under [section 8] of this act.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective date — applicability.** (1) This act is effective on passage and approval.

(2) Except as provided in section 14, this act applies only to positions that are filled after the effective date of this act.

Section 17. **Codification instruction.** (1) Section 12 is intended to be codified as an integral part of Title 49, chapter 2, and the provisions of Title 49, chapter 2, apply to section 12.

(2) Section 13 is intended to be codified as an integral part of Title 49, chapter 3, and the provisions of Title 49, chapter 3, apply to section 13.

Approved December 20, 1983.

HOUSE BILL NO. 10

AN ACT EXTENDING THE PAYMENT DATE OF A LOAN TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO FUND SUBDIVISION REVIEW; AMENDING SECTION 3, CHAPTER 696, LAWS OF 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3, Chapter 696, Laws of 1983, is amended to read:

"Section 3. **General fund loan.** There is authorized from the general fund to the department of health and environmental sciences a loan up to $50,000 to be used for continuing the function of subdivision review for *the biennium ending June 30, 1985.* The loan must be repaid to the general fund no later than June 30, *1985.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved December 16, 1983.

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APPROPRIATIONS

ENACTED BY THE

Forty-eighth Legislature

IN SPECIAL

SESSION

STATE OF MONTANA

1983

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE CONVENING ON DECEMBER 12, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal year 1984 for the operation of the special session of the forty-eighth legislature convening on December 12, 1983:

House of Representatives	$165,000
Senate	105,000
Legislative Council	25,000

Section 2. **Effective date.** This act is effective on passage and approval.

Approved December 14, 1983.

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39-30-206, 207	enacted	1
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49-3-103(2)	enacted	1

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Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 48th legislature in special session and the 49th legislature in regular session.

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	2	Extension of authority
	3	Effective date — applicability
	4	Codification instruction
143	1	81-8-401
	2	81-8-402
144	1	20-6-609
	2	Codification instruction
145	1	44-5-501
	2	44-5-502
	3	44-5-503
	4	44-5-505
	5	44-5-511
	6	44-5-506
	7	44-5-515
	8	44-5-504
	9	44-5-102
	10	Codification instruction
	11	Effective date
146	1	17-7-302
	2	Extension of authority
	3	Effective date
147	1	18-2-201
	2	Extension of authority
	3	Effective date
148	1	45-8-211
149	1	16-3-213
	2	16-3-214
	3	Extension of authority
	4	Effective date
150	1	75-10-417
	2	Saving clause
	3	Extension of authority

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151	1	50-19-204
	2	53-1-202
	3	53-1-402
	4	53-6-303
	5	53-20-102
	6	53-20-131
	7	53-20-214
	8	53-20-501
	9	53-20-502
	10	53-30-211
	11	Name change in newly enacted material
	12	Extension of authority
152	1	7-5-2411
	2	7-5-2412
153	1	19-3-1305
	2	19-3-1204
	3	Extension of authority
	4	Codification instruction
	5	Effective date
154	1	19-3-1301
	2	19-3-1302
	3	Extension of authority
	4	Effective date
155	1	75-20-302
	2	75-20-303
	3	75-20-225
	4	75-20-226
	5	75-20-227
	6	Codification instruction
	7	Extension of authority
	8	Effective date
156	1	20-7-451
157	1	77-3-444
	2	Filing of prior agreements
	3	Extension of authority
	4	Codification instruction
	5	Severability
	6	Applicability
158	1	Repealer
	2	Submission to electorate
159	1	10-2-301 (renum. 61-3-451)
	2	10-2-302 (renum. 61-3-452)
	3	10-2-303 (renum. 61-3-453)
	4	49-4-304
	5	61-3-446
	6	Repealer
	7	Codification instruction
160	1	15-30-310
	2	17-4-105
	3	20-25-312
	4	Extension of authority
	5	Codification instruction
	6	Effective date
161	1	61-9-423
162	1	3-15-404
	2	3-15-503
	3	3-15-506
	4	3-15-601
	5	3-15-602
163	1	45-5-202
164	1	7-1-4130
165	1	37-1-121
	2	37-1-131
	3	Extension of authority
166	1	2-15-1848
	2	37-14-102
	3	37-14-301
	4	37-14-306
	5	37-14-307
	6	37-14-310
	7	37-14-321
	8	Applicability
	9	Effective date
167	1	30-9-301
	2	30-9-312
168	1	32-5-103
	2	32-5-301
	3	32-5-322
	4	32-5-407
	5	32-5-501
	6	32-5-506
	7	Extension of authority
169	1	2-7-514
170	1	69-3-207
	2	Effective date
171	1	2-15-231
	2	Initial appointments
	3	Effective date
172	1	45-5-502
	2	45-5-503
	3	45-5-511
173	1	46-18-111
174	1	7-4-2801
	2	Effective date
175	1	3-10-206
	2	7-3-4317
	3	Effective date — applicability
176	1	7-6-4301
177	1	41-3-1103
	2	Extension of authority
	3	Effective date
178	1	69-12-102
	2	69-12-324
	3	Extension of authority
179	1	32-1-301
	2	32-1-322
	3	32-1-324
	4	32-1-325
	5	32-1-356
180	1	81-8-607
	2	81-8-610
	3	Extension of authority
	4	Effective date
181	1	17-8-306
182	1	17-5-205
	2	Effective date
183	1	2-15-1005
	2	17-6-201

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	3	Extension of authority
	4	Effective date
184	1	77-2-216
185	1	20-6-401
186	1	32-1-231
	2	32-1-235
187	1	45-8-332
	2	50-3-102
	3	Repealer
	4	Extension of authority
188	1	23-2-714
	2	23-2-715
	3	Extension of authority
	4	Effective date
189	1	85-2-506
	2	Extension of authority
190	1	69-12-611
	2	Extension of authority
191	1	33-20-132
	2	33-20-133
	3	33-20-134
	4	33-20-135
	5	33-20-136
	6	33-20-109 (renum. 33-20-131)
	7	33-20-112
	8	Codification instruction
192	1	13-35-211
193	1	7-5-2123
	2	Effective date
194	1	27-18-101
195	1	69-3-101
	2	69-3-111
	3	Codification instruction
	4	Extension of authority
	5	Effective date
196	1	13-19-101
	2	13-19-102
	3	13-19-106
	4	13-19-104
	5	13-19-103
	6	13-19-105
	7	13-19-201
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	10	13-19-204
	11	13-19-205
	12	13-19-302
	13	13-19-206
	14	13-19-207
	15	13-19-303
	16	13-19-301
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	19	13-19-307
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	21	13-19-309
	22	13-19-310
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	25	13-19-313
	26	13-19-314
	27	13-19-312
	28	7-13-2236
	29	13-1-401
	30	Codification instruction
	31	Effective date
197	1	2-15-1516
	2	80-10-101
	3	80-10-103
	4	80-10-201
	5	80-10-204
	6	80-10-207
	7	Extension of authority
198	1	15-30-111
	2	Effective date — applicability
	3	Extension of authority
199	1	15-30-131
	2	Extension of authority
	3	Effective date — applicability date
200	1	15-70-325
	2	Extension of authority
201	1	7-6-2315
	2	Repealer
202	1	46-15-321
	2	46-15-322
	3	46-15-323
	4	46-15-324
	5	46-15-325
	6	46-15-326
	7	46-15-327
	8	46-15-328
	9	46-15-329
	10	Codification instruction
	11	Repealer
203	1	49-4-302
204	1	3-2-403
	2	Effective date
205	1	46-18-201
206	1	7-6-2315
	2	7-6-2316
	3	7-6-2351
	4	53-2-322
	5	Effective date
207	1	2-17-501
	2	Effective date
208	1	72-5-408
209	1	61-3-342
	2	Extension of authority
210	1	25-13-611
	2	25-13-612
	3	25-13-613
	4	25-13-616
	5	25-13-617
	6	Repealer
211	1	46-21-101
	2	46-22-101
212	1	61-6-102
	2	61-6-303
	3	61-6-304
	4	Extension of authority
	5	Effective date

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213	1	25-35-505
	2	Effective date
214	1	61-8-369
	2	87-3-101
215	1	7-32-2143
216	1	2-17-501
	2	Effective date
217	1	82-4-254
	2	Extension of authority
218	1	61-6-112
	2	61-6-122
	3	61-6-125
	4	61-6-131
	5	61-6-133
	6	61-6-138
	7	61-6-142
	8	61-6-151
	9	Repealer
	10	Extension of authority
219	1	80-8-109
	2	Extension of authority
	3	Effective date
220	1	7-2-2209
	2	7-3-1216
	3	7-3-1219
	4	7-4-2105
	5	7-4-2619
	6	7-4-2631
	7	7-5-4208
	8	7-5-4304
	9	7-6-2211
	10	7-13-2225
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	12	7-14-2531
	13	7-14-2823
	14	7-21-2306
	15	7-21-2407
	16	7-32-2102
221	1	61-8-301
	2	61-8-351
	3	61-8-715
	4	Effective date
222	1	15-70-302
	2	15-70-311
	3	Extension of authority
223	1	16-3-244
	2	Extension of authority
224	1	19-4-101
	2	Extension of authority
	3	Effective date
225	1	13-37-210
	2	Codification instruction
226	1	39-51-3201
	2	Extension of authority
227	1	45-1-205
228	1	10-3-204
	2	10-3-205
	3	10-3-207
	4	10-3-208
	5	Repealer
229	1	16-3-241
	2	Extension of authority
230	1	90-1-103
	2	Effective date
231	1	18-8-103
	2	Extension of authority
232	1	70-24-422
233	1	61-3-106
234	1	18-2-409
	2	Codification instruction
	3	Effective date
235	1	25-13-701
236	1	13-37-106
	2	15-2-102
	3	Repealer
	4	Coordination instruction
	5	Effective date
237	1	39-31-204
	2	Effective date
238	1	32-6-204
	2	Extension of authority
239	1	13-13-201
	2	13-13-203
	3	13-13-211
	4	13-13-212
	5	13-13-213
	6	13-13-221
	7	13-13-222
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	11	13-13-226
	12	13-13-227
	13	13-13-228
	14	13-13-229
	15	13-13-230
	16	Codification instruction
	17	Effective date
240	1	37-60-408
	2	Codification instruction
	3	Extension of authority
241	1	53-24-303
	2	Extension of authority
242	1	61-8-714
	2	61-8-722
243	1	53-21-411
	2	53-21-412
	3	53-21-413
244	1	75-7-305
	2	Coordination instruction
	3	Effective date
245	1	53-20-209
	2	Extension of authority
246	1	15-35-108
	2	Effective date
247	1	Repealer
	2	Effective date
248	1	61-5-309
	2	Codification instruction
249	1	19-8-601
	2	19-8-603
	3	19-8-502
	4	Extension of authority
	5	Effective date

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	2	7-2-2313
	3	7-2-4902
	4	7-3-149
	5	7-3-160
	6	7-3-176
	7	7-3-192
	8	7-3-4208
	9	7-3-4213
	10	7-3-4227
	11	7-3-4305
	12	7-3-4310
	13	7-3-4311
	14	7-4-2106
	15	7-4-2206
	16	7-5-136
	17	7-11-307
	18	7-13-2208
	19	7-13-2241
	20	7-13-2242
	21	7-13-2246
	22	7-13-2341
	23	7-33-2106
	24	7-34-2117
	25	13-10-201
	26	13-10-208
	27	13-10-325
	28	13-10-326
	29	13-10-327
	30	13-10-601
	31	13-12-201
	32	13-13-205
	33	13-14-118
	34	13-25-101
	35	13-25-203
	36	13-25-205
	37	13-26-103
	38	13-35-107
	39	22-1-304
	40	85-7-1702
	41	85-8-306
	42	Effective date
251	1	7-15-4292
252	1	Repealer
	2	Saving clause
253	1	15-8-701
	2	Extension of authority
	3	Effective date
254	1	35-18-105
	2	35-18-106
255	1	87-2-301
	2	87-2-302
	3	87-2-304
	4	87-2-306
	5	87-2-505
	6	87-2-711
	7	Extension of authority
	8	Effective date
256	1	7-32-104
	2	7-32-115
	3	39-3-406
	4	Effective date
257	1	15-70-101
	2	Extension of authority
	3	Effective date
258	1	15-36-105
	2	15-36-107
	3	Extension of authority
	4	Effective date
259	1	7-13-2340
	2	Codification instruction
260	1	37-31-101
	2	37-31-304
	3	37-31-305
	4	37-31-308
	5	37-31-312
	6	37-31-322
	7	Extension of authority
	8	Effective date
261	1	7-6-4302
262	1	87-2-807
	2	87-4-902
	3	Codification instruction
	4	Termination
263	1	31-1-106
264	1	7-4-2107
	2	7-14-2126
	3	Effective date
265	1	20-9-141
	2	20-9-331
	3	20-9-333
	4	20-9-352
	5	Effective date
266	1	7-12-4611
267	1	17-1-102
	2	17-2-110
	3	Extension of authority
268	1	45-5-203
269	1	37-51-204
	2	37-51-302
	3	Extension of authority
270	1	18-5-102
	2	15-8-103
	3	Extension of authority
271	1	85-2-421
	2	85-2-424
	3	85-2-426
	4	85-2-431
	5	Extension of authority
	6	Repealer
	7	Codification instruction
	8	Effective date
272	1	37-1-141
273	1	37-1-137
	2	Codification instruction
274	1	37-30-101
	2	37-30-203
	3	37-30-301
	4	37-30-303
	5	37-30-305
	6	37-30-306
	7	37-30-307
	8	Repealer
	9	Extension of authority

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276	1	61-5-111
	2	Coordination instruction
	3	Applicability
	4	Effective date
277	1	61-5-111
	2	61-5-114
	3	61-5-121
	4	15-1-501
	5	19-6-401
	6	19-6-404
	7	20-7-504
	8	Codification instruction
	9	Effective date
278	1	19-6-101
	2	19-6-402
	3	19-6-403
	4	19-6-404
	5	19-6-501
	6	19-6-502
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	8	19-6-503
	9	19-6-601
	10	19-6-602
	11	19-6-603
	12	19-6-604
	13	Extension of authority
	14	Repealer
	15	Codification instruction
	16	Effective date
279	1	7-2-4601
	2	7-2-4606
280	1	7-32-235
281	1	39-4-109
	2	Extension of authority
282	1	61-4-101
	2	61-4-103
	3	61-4-104
	4	61-4-105
283	1	72-5-501
	2	72-5-502
284	1	82-4-361
	2	82-4-362
	3	Extension of authority
285	1	30-10-110
	2	Codification instruction
	3	Extension of authority
	4	Effective date
286	1	77-1-304
	2	77-2-213
	3	77-2-214
	4	77-5-104
287	1	77-2-203
	2	77-2-204
	3	77-2-207
	4	77-2-206
	5	Codification instruction
	6	Extension of authority
288	1	82-4-232
	2	Extension of authority
289	1	82-4-231
	2	Extension of authority
290	1	77-6-203
	2	Extension of authority
291	1	18-2-105
	2	Extension of authority
	3	Effective date
292	1	15-6-134
	2	Extension of authority
	3	Effective date — applicability
293	1	85-1-503
	2	85-1-506
	3	85-1-514
	4	Codification instruction
	5	Extension of authority
	6	Effective date
294	1	19-6-707
	2	19-6-402
	3	19-6-404
	4	Extension of authority
	5	Coordination section
	6	Codification instruction
	7	Effective date
295	1	46-8-114
	2	46-8-201
	3	Effective date
296	1	17-5-1526
	2	17-5-1527
	3	Extension of authority
	4	Effective date
297	1	30-11-701
	2	30-11-702
	3	30-11-704
	4	30-11-711
	5	30-11-712
	6	30-11-713
	7	Saving clause
298	1	19-5-301
	2	Extension of authority
	3	Effective date
299	1	20-3-106
	2	20-3-331
	3	20-9-333
	4	20-9-335
	5	20-9-348
	6	20-9-351
	7	20-9-805
	8	Effective date
300	1	53-1-106
	2	Extension of authority
	3	Codification instruction
301	1	33-8-115
	2	33-8-116
	3	33-8-117
	4	33-8-118
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	9	33-8-123
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	11	Termination date — enforceability of issued policies
	12	Extension of authority
302	1	33-22-111
	2	33-22-702
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	4	Applicability
	5	Effective date
303	1	19-3-403
	2	19-3-1106
	3	Extension of authority
304	1	23-1-105
	2	87-2-111
	3	87-2-403
	4	87-2-506
	5	87-2-805
	6	Extension of authority
	7	Effective date
305	1	87-5-601
	2	87-5-602
	3	87-5-603
	4	87-5-604
	5	87-5-605
	6	87-5-606
	7	2-15-3404
	8	Effective date
306	1	60-11-201
	2	Effective date
307	1	37-1-101
308	1	17-5-1529
	2	17-5-1649
	3	17-6-321
	4	Extension of authority
309	1	76-2-411
310	1	80-10-501
	2	80-10-502
	3	80-10-503
	4	80-10-506
	5	80-10-507
	6	80-10-508
	7	80-10-509
	8	80-10-207
	9	80-10-303
	10	Extension of authority
	11	Codification instruction
311	1	23-2-511
	2	Effective date
312	1	23-2-512
	2	23-2-513
	3	23-2-515
	4	Extension of authority
	5	Implementation
	6	Effective date
313	1	15-18-102
	2	Effective date — applicability date
314	1	61-5-208
315	1	32-1-432
	2	Effective date
316	1	81-23-105
	2	Extension of authority
317	1	15-16-611
	2	Effective date — applicability
318	1	3-10-303
319	1	90-7-302
	2	Extension of authority
	3	Effective date
320	1	7-2-4321
	2	7-2-4325
321	1	15-70-301
	2	15-70-322
	3	Extension of authority
322	1	87-2-102
	2	87-2-106
	3	Extension of authority
323	1	50-61-114
	2	Extension of authority
324	1	61-3-201
	2	61-3-206
	3	61-3-607
	4	Codification instruction
	5	Extension of authority
325	1	53-1-105
	2	Codification instruction
	3	Effective date
326	1	90-7-303
	2	Extension of authority
	3	Effective date — applicability
327	1	61-12-701
	2	61-12-702
328	1	19-3-805
	2	19-4-606
	3	80-2-102
	4	Effective date
329	1	87-2-605
	2	87-2-601
	3	87-2-603
	4	Extension of authority
	5	Codification instruction
	6	Effective date
330	1	27-1-714
331	1	87-2-501
	2	Extension of authority
	3	Effective date
332	1	27-6-103
	2	27-6-206
	3	27-6-301
	4	27-6-303
	5	27-6-401
	6	27-6-702
	7	Effective date
333	1	46-17-311
334	1	3-15-203
	2	26-2-502
	3	26-2-503
335	1	1-1-502
336	1	67-2-105
	2	39-71-118
	3	39-71-401
	4	Extension of authority
	5	Codification instruction

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	6	Effective date
337	1	2-17-113
	2	Extension of authority
	3	Effective date
338	1	17-6-305
	2	17-6-306
	3	Effective date — applicability
339	1	82-1-101
	2	82-1-104
	3	82-1-107
	4	82-1-108
	5	82-11-122
	6	Extension of authority
340	1	87-1-106
	2	87-1-209
	3	Repealer
	4	Effective date
341	1	23-2-612
	2	61-3-103
	3	61-3-202
	4	Saving clause
	5	Extension of authority
342	1	49-2-303
	2	49-2-403
	3	49-3-201
	4	Extension of authority
343	1	17-7-111
344	1	20-10-141
	2	Extension of authority
345	1	82-4-335
	2	82-4-336
	3	82-4-338
	4	82-4-354
	5	82-4-355
	6	Codification instruction
	7	Severability
	8	Extension of rulemaking authority
346	1	46-31-101
	2	Effective date
347	1	16-3-304
	2	16-3-305
	3	Effective date
348	1	3-11-103
	2	3-11-206
	3	40-1-301
	4	61-5-116
	5	61-5-302
349	1	7-1-2121
	2	7-1-2122
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357	1	15-1-303
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390	1	90-4-201
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395	1	2-15-1018 (renum. 2-15-1514(2))
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405	1	37-3-311
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408	1	17-6-302
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409	1	39-51-2304
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410	1	45-8-211
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413	1	7-6-401
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417	1	5-4-204
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418	1	17-5-609
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419	1	Termination date extension Sec. 9, Ch. 675, L. 1983 2-9-107
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420	1	90-6-209
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421	1	7-6-201
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425	1	7-11-1101
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427	1	75-10-512
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428	1	61-4-112
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430	1	7-5-2132
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431	1	44-10-103
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432	1	25-2-111
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434	1	40-4-204(3)
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435	1	7-3-176
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436	1	15-30-150
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437	1	15-50-304
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438	1	20-9-212
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439	1	15-24-1501
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440	1	61-6-304
441	1	3-5-302
442	1	40-6-108
443	1	50-5-204
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444	1	61-2-302
	2	61-11-101
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445	1	35-1-213
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446	1	13-2-102
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447	1	7-32-2231
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448	1	80-12-103
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449	1	37-4-401
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450	1	16-11-111
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451	1	46-23-201
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452	1	15-8-511
	2	15-8-512
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453	1	82-4-303
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454	1	61-5-104
455	1	7-16-2202
	2	7-16-2205
	3	Effective date
456	1	7-14-1101
	2	7-14-1102
	3	7-14-1103
	4	7-14-1104
	5	7-14-1105
	6	7-14-1111
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	10	7-14-1126
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459	1	72-17-204
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462	1	90-6-207
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465	1	23-5-412
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467	1	18-2-103
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468	1	18-1-102
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469	1	33-20-114
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472	1	5-13-304
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473	1	77-6-506
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474	1	20-15-231
475	1	53-6-104
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476	1	22-1-1101
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478	1	30-10-103
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479	1	30-10-105
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480	1	39-71-117
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481	1	7-6-1101
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	5	7-6-1111
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	11	17-5-1611
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482	1	3-10-231
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484	1	7-6-2325
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487	1	87-1-304
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490	1	76-4-102
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492	1	44-3-401
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493	1	19-4-702
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494	1	61-3-447
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497	1	82-10-503
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500	1	76-3-204
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503	1	"Division of motor vehicles" changed to "department of justice"
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		44-1-705
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		44-1-802
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		44-1-805
		44-1-806
		44-1-901
		44-1-903
		44-1-1005
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		61-1-504
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	7	75-10-702
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	9	Appropriation
	10	Severability
	11	Coordination instruction
	12	Effective dates
712	1	17-3-211
	2	17-3-212
	3	Effective date
713	1	53-19-101
	2	53-19-102
	3	53-19-103
	4	53-19-104
	5	53-19-105
	6	53-19-111
	7	53-19-112
	8	53-19-113
	9	50-5-101
714	1	7-32-303
	2	Effective date
715	1	15-35-108
	2	90-6-205
	3	Coordination instruction
	4	Effective date — applicability
	5	Termination date
716	1	15-38-202
	2	Effective date
717	1	Appropriations from the water development state special revenue account
	2	Appropriations under the renewable resource development program
	3	Opportunity to receive loans for projects that do not receive grants
	4	Approval of loans from bond proceeds and completion of appropriation
	5	Reauthorization of loans approved by the 1983 Legislature
	6	Coal severance tax bond authorized
	7	Appropriation and creation of debt for coal severance tax bonds
	8	Projects not completing requirements — loans reauthorized
	9	Reallocation of resource indemnity trust account interest income
	10	Emergency grants
	11	Conditions of loans and grants
	12	Conditions for grants
	13	Conditions for loans
	14	Interest rates on loans
	15	Private and discount purchase of loans

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Ch.	Sec.	MCA
	16	90-2-107
	17	Water development program direction — future preference for appropriations
	18	Coordination instruction
	19	Severability
	20	Effective date
718	1	Appropriation
	2	75-10-532
	3	Effective date — termination
719	1	46-18-236
	2	7-4-2502
	3	7-4-2503
	4	7-4-2505
	5	Effective date
	6	Nonseverability
720	1	23-5-601
	2	23-5-602
	3	23-5-606
	4	23-5-607
	5	23-5-608
	6	23-5-615
	7	23-5-605
	8	23-5-611
	9	23-5-603
	10	23-5-612(1)
	11	23-5-613
	12	23-5-612(2)
	13	Appropriation
	14	Coordination instruction
	15	Effective dates — termination date
721	1	16-1-408
	2	16-1-411
	3	Effective date
722	1	15-6-141
	2	Extension of authority
	3	Applicability date
723	1	33-20-141
	2	33-20-142
	3	33-22-121
	4	33-22-122
	5	Extension of authority
	6	Codification instruction
724	1	15-36-101
	2	15-23-603
	3	Extension of authority
	4	Effective date
725	1	50-16-311
726	1	7-6-2321
	2	7-6-4232
	3	20-9-142
	4	15-10-202
	5	Revenue oversight committee consideration of advisability of statewide protest fund
	6	Effective date
727	1	40-4-204
	2	40-4-223
	3	40-4-224
728	1	37-43-102
	2	37-43-202
	3	37-43-203
	4	37-43-302
	5	37-43-303
	6	37-43-304
	7	37-43-305
	8	37-43-306
	9	Appropriation
	10	Repealer
	11	Extension of authority
	12	Codification instruction
	13	Effective date
729	1	7-6-4461
	2	7-6-4462
	3	7-6-4463
	4	7-6-4464
	5	7-6-4465
	6	7-6-4466
	7	7-6-4467
	8	Effective date
730	1	90-4-102
	2	90-4-104
	3	90-4-106
	4	90-4-109
	5	Codification instruction
	6	Extension of authority
	7	Effective date
731	1	16-4-110
	2	16-4-209
	3	16-4-105
	4	16-4-201
	5	16-4-204
	6	Codification instruction
	7	Extension of authority
	8	Effective date — applicability
732	1	22-2-308
	2	22-2-309
	3	22-2-306
	4	22-2-303
	5	Appropriation of cultural and aesthetic grant funds
	6	Reversion of granted funds
	7	Codification instruction
	8	Effective date
733	1	Appropriation
	2	90-6-205
	3	Effective date
	4	Termination date
734	1	10-2-601
	2	10-2-602
	3	Appropriation
735	1	85-20-201
	2	Effective date
736	1	72-16-445
	2	72-16-446
	3	72-16-447

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Ch.	Sec.	MCA
	4	72-16-448
	5	72-16-449
	6	72-16-450
	7	Approval of Daly mansion for in-kind payment
	8	Applicability
	9	Codification instruction
	10	Effective date
737	1	41-5-207
	2	41-5-306
	3	53-30-202
	4	Appropriation
	5	Termination date
	6	Effective dates
738	1	20-9-316
	2	20-9-317
	3	20-9-318
	4	20-9-319
	5	Effective date
739	1	15-6-133
	2	15-6-134
	3	15-6-142
	4	Extension of authority
740	1	2-18-301
	2	2-18-303
	3	2-18-311
	4	2-18-312
	5	2-18-313
	6	2-18-314
	7	2-18-315
	8	2-18-703
	9	Appropriation
	10	Extension of authority
	11	Effective date
741	1	15-50-205
	2	Extension of authority
	3	Applicability
	4	Effective date
742	1	7-2-2201
	2	7-2-2202
	3	7-2-2205 7-2-2206(4)
	4	7-2-2206(1) through (3)
	5	7-2-2206(5)
	6	7-2-2205(3) 7-2-2206(6)
	7	7-2-2207(1)
	8	7-2-2207(2)
	9	7-2-2215
	10	7-2-2216
	11	7-2-2217
	12	7-2-2218
	13	7-2-2219
	14	7-2-2221
	15	7-2-2222
	16	7-2 2223
	17	7-2-2224
	18	7-2-2243
	19	Repealer
	20	Codification instruction
743	1	15-1-101
	2	15-6-134
	3	15-6-138
	4	15-6-141
	5	15-6-145
	6	15-6-146
	7	15-8-111
	8	15-23-202
	9	15-8-104
	10	15-1-201(1)(b) and (c)
	11	Severability
	12	Effective dates
744	1	61-4-501
	2	61-4-502
	3	61-4-503
	4	61-4-505
	5	61-4-506
	6	61-4-507
	7	61-4-511
	8	61-4-512
	9	61-4-525
	10	61-4-515
	11	61-4-516
	12	61-4-517
	13	61-4-518
	14	61-4-519
	15	61-4-526
	16	61-4-520
	17	61-4-531
	18	61-4-532
	19	61-4-533
	20	Applicability
	21	Severability
	22	Codification instruction
	23	Coordination
	24	Effective date

1985 Ballot Issues

Const. Amend.	Sec.	MCA
No. 13	1	Art. VII, § 11
	2	Effective date
	3	Submission to electorate
	4	Coordination instruction
No. 14	1	Art. V, § 14
	2	Effective date

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1985 Ballot Issues

Const. Amend.	Sec.	MCA
	3	Submission to electorate
	4	Coordination instruction
Initiative	**Sec.**	**MCA**
No. 97	1	37-29-101
	2	37-29-102
	3	37-29-301
	4	37-29-302
	5	37-29-402
	6	37-29-401
	7	2-15-1855
	8	37-29-202
	9	37-29-203
	10	37-29-201
	11	37-29-303
	12	37-29-305
	13	37-29-304
	14	37-29-306
	15	37-29-311
	16	37-29-312
	17	37-29-313
	18	37-29-104
	19	37-29-103
	20	37-29-404
	21	37-29-412
	22	37-29-321
	23	Nominations for appointment to original board
	24	37-4-103
	25	37-14-102
	26	37-14-301
	27	Initial board
	28	Severability
	29	Codification instruction
	30	Effective date

June 28, 1985 Special Session

Ch.	Sec.	MCA
1	1	61-3-533
	2	Name change
	3	3-5-901
	4	3-5-902
	5	3-5-903
	6	3-5-602
	7	3-5-604
	8	46-8-201
	9	46-15-104
	10	46-18-235
	11	Appropriation transfer
	12	Effective date — contingent retroactive effect — termination

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SESSION LAWS

ENACTED BY THE

Forty-ninth Legislature

IN SPECIAL

SESSION

June 28, 1985

STATE OF MONTANA

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CHAPTER NO. 1

[SB 1]

AN ACT REINSERTING THE INFLATION COMPUTATION INTO THE LIGHT MOTOR VEHICLE FEE SYSTEM; PROVIDING THAT THE INFLATION COMPUTATION DOES NOT APPLY TO THE DISTRICT COURT FEE; TRANSFERRING THE ADMINISTRATION OF STATE FUNDING FOR DISTRICT COURTS FROM THE SUPREME COURT TO THE DEPARTMENT OF COMMERCE; APPROPRIATING TO THE DEPARTMENT OF COMMERCE FUNDING FOR THE STATE FUNDING OF DISTRICT COURTS; DELETING THE FUNDING FROM THE SUPREME COURT BUDGET; AMENDING SECTION 2, CHAPTER 685, LAWS OF 1985, SECTIONS 1 THROUGH 5, 10, 15, AND 16 OF CHAPTER 680, LAWS OF 1985; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 685, Laws of 1985, is amended to read:

"Section 2. Section 61-3-533, MCA, is amended to read:

"61-3-533. Schedule of fees for automobiles and light trucks. (1) Except as provided in subsection *(3)*, the following schedule, based on vehicle age and weight, is used to determine the fee imposed by 61-3-532:

Vehicle Age	Weight			
	2,850 Pounds or less	*District Court Fee*	More Than 2,850 Pounds	*District Court Fee*
Less than or equal to 4 years	*$70*	*$7*	*$90*	*$7*
More than 4 years and less than 8 years	*40*	*5*	*50*	*5*
8 years old and over	*10*	*2.50*	*15*	*2.50*

(2) (a) The fee for a light vehicle is determined by:

(i) multiplying the appropriate dollar amount from the table in subsection (1), but not the district court fee, by the ratio of the PCE for the second quarter of the year prior to the year of licensing to the PCE for the second quarter of 1981; and

(ii) rounding the product thus obtained to the nearest whole dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by

the bureau of economic analysis of the United States department of commerce.

(3) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is $8, *with $3 of the fee earmarked for district courts.*""

Section 2. **Name change.** Whenever the term "additional light vehicle license fee" or "additional fee" appears in 61-3-509, 61-3-533, or 61-3-536, the term is changed to "block grant fee".

Section 3. Section 1, Chapter 680, Laws of 1985, is amended to read:

"Section 1. **State assumption of certain district court expenses.** (1) Effective July 1, 1985, the state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; and

(f) psychiatric examinations.

(2) The *department of commerce,* in consultation with the district judges for each judicial district, shall include within the *department's* biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) If money appropriated for the expenses listed in subsection (1) is insufficient to fully fund those expenses, the county is responsible for payment of the balance. If no money is appropriated, the county is responsible for payment of all expenses."

Section 4. Section 2, Chapter 680, Laws of 1985, is amended to read:

"Section 2. **Fiscal administration for payment of court expenses.** The *department of commerce* shall:

(1) establish procedures for disbursement of funds for payment of district court expenses listed in [section 1], including prorating of those funds if they are insufficient to cover all expenses listed in [section 1];

(2) develop a uniform accounting system for use by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes; and

(3) provide for annual auditing of district court expenses to assure normal operations and consistency in reporting of expenditures."

Section 5. Section 3, Chapter 680, Laws of 1985, is amended to read:

"Section 3. **Reimbursement for juror and witness fees.** According to procedures established by the *department of commerce* under [section

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2(1)], each clerk of district court shall submit to the *department* a detailed statement containing a list of witnesses and jurors for criminal cases only and the amount of per diem and mileage paid to each by the county. Upon receipt and verification of the statement, the *department* shall promptly reimburse the designated county for the cost of witness and juror fees on a full or prorated basis in accordance with [section 2]. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund."

Section 6. Section 4, Chapter 680, Laws of 1985, is amended to read:

"Section 4. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive a base annual salary of not less than $16,000 or more than $23,000 and no other compensation except as provided in 3-5-604. The salary shall be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed and out of an appropriation made to the *department of commerce* as provided in subsection (2).

(2) The *department of commerce* shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his or their district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary.""

Section 7. Section 5, Chapter 680, Laws of 1985, is amended to read:

"Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Transcript of proceedings. (1) Each reporter must furnish, upon request, with all reasonable diligence, to a party or his attorney in a case in which he has attended the trial or hearing a transcript from his stenographic notes of the testimony and proceedings of the trial or hearing or a part thereof, upon payment by the person requiring the same

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of $2 per page for the original transcript, 50 cents per page for the first copy, 25 cents per page for each additional copy.

(2) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate for the sum to which he is entitled. The reporter shall submit the certificate to the *department of commerce which*, in accordance with [section 2], is responsible for the prompt payment of all or a portion of the amount due the reporter. If the *department*, in accordance with [section 2], pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a statement from the reporter.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a transcript, it shall be furnished to him and paid for by the state in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required in [section 1].""

Section 8. Section 10, Chapter 680, Laws of 1985, is amended to read:

"Section 10. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in [section 1] to the county in which the proceeding arose, the *department of commerce*, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest.""

Section 9. Section 15, Chapter 680, Laws of 1985, is amended to read:

"Section 15. Section 46-15-104, MCA, is amended to read:

"46-15-104. Expenses of witness. (1) When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

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(2) According to procedures established by the *department of commerce* under [section 2(1)], the clerk of district court shall submit to the *department* a detailed statement containing a list of witnesses and the amount of expenses paid to each by the county. Upon receipt and verification of the statement, the *department* shall promptly reimburse the designated county for all or a portion of the cost of witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.""

Section 10. Section 16, Chapter 680, Laws of 1985, is amended to read:

"Section 16. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in [section 1], the money collected from assessment of these costs must be paid to the *department of commerce* for deposit into the state general fund to the extent the expenses were paid by the state; and

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose.""

Section 11. **Appropriation transfer.** The general fund appropriation to the Supreme Court for state funding of certain District Court operations contained in item No. 4 of the Judiciary budget as contained in House Bill 500, L. 1985, is transferred to the Department of Commerce. In accordance with such transfer, the spending authority of the Supreme Court is reduced $3,170,633 for fiscal year 1986 and $3,152,873 in fiscal year 1987, and there is appropriated to the Department of Commerce from the general fund $3,170,633 for fiscal year 1986 and $3,152,873 in fiscal year 1987 for certain District Court operations.

Section 12. **Effective date — contingent retroactive effect — termination.** (1) This act is effective on passage and approval, and sections 1 and 2 apply to light vehicles registered on or after July 1, 1985. If this act is approved after June 30, 1985, sections 1 and 2 apply retroactively within the meaning of 1-2-109 to light vehicles registered on or after July 1, 1985.

(2) Sections 1 and 2 terminate July 1, 1987. This termination does not affect the reinsertion of 61-3-533(2) as it read on January 1, 1985.

Approved June 29, 1985.

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HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-NINTH LEGISLATURE CONVENING ON JUNE 28, 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1985 and 1986 for the operation of the special session of the Forty-Ninth Legislature convening on June 28, 1985:

House of Representatives	$27,849
Senate	17,512
Legislative Council	977

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 3, 1985.

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